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PLAIN LANGUAGE AND THE LAW AN INQUIRY AND A BIBLIOGRAPHY

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PLAIN LANGUAGE AND THE LAW

AN INQUIRY AND A BIBLIOGRAPHY

prepared for the Department of Justice Ottawa

by

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with

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March 1986

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No one can write decently who is distrustful of the reader's intelligence or whose attitude is patronizing.

E.B. White *The elements of style*

It is not the reader interested in science who is deaf, but the specialists who have been dumb ... We are divided by schooling and experience but we share a deeper basis of common ability.

Jacob Bronowski *The common sense of science*

There are no important propositions that cannot be stated in plain language ... The writer who seeks to be intelligible needs to be right; he must be challenged if his argument leads to an erroneous conclusion and especially if it leads to the wrong action. But he can safely dismiss the charge that he has made the subject too easy. The truth is not difficult.

John Kenneth Galbraith 'Writing, typing & economics' *Atlantic* March 1978
Quoted by Richard Wydick

THIS IS A LAW

by F.R. Scott Canadian poet lawyer teacher

Who says go
When the Green says Go
And who says No
When the Red says No?
Asked I.

I, said the Law,
I say go
When the Green says Go
And don't you say Go
When the Red says No,
Said the Law.

Who are you
To tell me so
To tell me to Go
When the Green says Go
And tell me No
When the Red says No?
Asked I.

I am you
Said the Law.

Are you me
As I want to be?
I don't even know
Who you are.

I speak for you
Said the Law.

You speak for me?
Who told you you should?
Who told you you could?
How can this thing be
When I'm not the same as before?

I was made for you
I am made by you
I am human too
So change me if you will
Change the Green to Red
Shoot the ruling class
Stand me on my head
I will not be dead
I'll be tellling you to Go
I'll be telling you No
For this is a Law
Said the Law.

The dance is one
Toronto: McClelland and Stewart 1973

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1

WRITING AND READING: THE HISTORY AND THEORY

1.1 *A few words as we begin*

'Plain language and the law' is not the cohesive subject which the catchy phrase promises. It is a vast territory: linguistics, pedagogy, sociology, the history of language, style, usage, grammar, political and social history, are some of its regions. We have made our way in the territory with the help of generous people who provided maps, histories, equipment, speculations, questions. Two gave us something more: courage. They are Louise Abdelahad, Research Officer at the Department of Justice, Ottawa; and Gail Dykstra, Canadian Law Information Council, Toronto.

In the Glossary we define 'plain language' as a generic term and 'plain English' as a specific term. (See also Section 4). Many writers do not make that distinction and use 'plain language' when they are discussing specifically, and only, English. We have tried to keep the distinction, but consistency has proved difficult.

We have come to think and talk about this piece of work as an inquiry rather than a research report. We want to emphasize that this is not an empirical study but a phenomonological one. Our perspectives and methods, in Janet Emig's phrase, 'are intertwined' with the work. (See Section 16 for more on Janet Emig).

This a collaborative piece of work but Marion Blake was responsible for most of the final revision. Failures to achieve clarity and grace are her responsiblity.

The four of us are readers and writers; and variously librarian, teacher, free lance editor, philosophy student. We share some principles: that the ways in which all of us make sense of the world are not pre-cast by the number of years we spend in formal schooling; that it is individuals, not institutions, who make decisions; that individuals can change the way things are.

1.2 *Glossary*

to comprehend To pass a test of written questions based on the assigned text.

draft One of the versions of a text. The draft when the writer abandons the work is the final draft

to draft The verb lawyers usually use to distinguish *their* writing from other kinds of writing. In this work we do not make that distinction and we do not use the term. We use David Mellinkoff's title ***Legal writing*** as precedent. Lawyers: See **to redact**

drafting The tentative central stage in the writing process between rehearsing and revising (See Section 5)

to edit To prepare an abandoned text for publication. **to write** is frequently misused when it is the the narrower function of editing which is being discussed.

English teachers In this term we include: reading teachers; writing teachers; language arts teachers; teachers of English literature (commonly called English teachers); professors of English in university English departments, teachers training colleges and faculties of education; educators and educationists who ever they may be.

Flesch Plain English Text manufactured to the specifications of a formula. Dr. Flesch's own defintion: English for the poor, semiliterate and not very bright consumer'. See **Plain English**

Plain English The English writing style of George Orwell, William Strunk, E.B. White - to name a few.

Plain Language A generic term referring to the use of plain, rather than traditional, language; particularly in the phrase 'Plain Language and the Law'.

Plain Legal English The legal writing style of Lord Denning - to name one. (See Section 20). We use this term to avoid the cumbersome phrase 'legal documents written in Plain English'

to read To make sense of a text. To understand (See Section 6). We never use it as a synonym for '**to comprehend**' or 'to bark at the text'

to redact We offer this as a replacement for '**to draft**' which we have kept for another purpose. 'To redact' should prove useful for lawyers who want to specify that they are composing text that is binding in law. It's related to the French term for drafting 'redaction'. We owe it to William Safire (*New York Times Magazine* 29 Sept 1985 p 7).

'*Redact* is a good verb that deserves wider use. It means 'make sutiable for presentation', from the Latin word for 'reduce'. *Redact* is more precise in its legal connotation of removing that which is unsuitable than *edit*, more purposeful than *shorten* or *compress*, more formal than *boil down*'

rehearsing The first stage in the writing process (See Section5)

revising The last stage in the writing process (See Section 5). Do not confuse with editing. See **to edit**

sensible The quality of a text which reveals the writer's sense to the reader

useable The quality of the design of a text which allows the reader to understand and follow the instructions.

to write, writing

We reserve this term for the whole writing process. (See Section 5) See **drafting, rehearsing, revising**

1.3 *Introduction*

Our inquiry concerns writing and reading legal text. It is framed by two convictions:

1 That legal documents must make sense to those who are affected by them. This is a political conviction, part of our controlling gaze.

2 That legal documents written in Plain Legal English retain their legal power. We provide the evidence in Part II 'Plain Legal Language at Work', in particular Section17.

We touch on contemporary theories of writing and reading processes, the interdependence of thought and language, research paradigms in the human and social sciences.

We identify Stylish English and describe its companions: officialese and legalese. We uncover two types of Plain English: Strunk & White Plain English and Flesch Plain English. We describe both.

We propose that the concept of readability has been assigned a concrete reality which it does not possess.

We describe Plain Legal English documents at work: standard consumer contracts; administrative forms; statutes, regulations and by-laws; wills and private contracts; judgments. We look at the background of the writers, the incentives for change, the process of change and the results.

We identify and describe the catalysts and players - individuals and institutions - who are part of the Plain English Movement. We pay particular attention to plain language laws.

We plot the Canadian Plain English Movement from 1975 to early 1986 with a chronology of publications and events.

We present our observations and recommend some ways in which Plain Legal English can be encouraged, supported and extended.

1.4 *Collecting the evidence*

We began with Gail Dykstra at the Canadian Law Information Council (CLIC). Gail gave us an immediate sense of what the plain langauge and the law movement is about, who the players are, where to begin reading and who to talk to.

We conjured the major subject fields: law and the legal profession, business, banking, insurance, language and linguistics, writing and reading research, education, government, typography and print design. We wanted as well to see what general interest publications and the popular press had to say about plain language and the law.

We mapped three strategies: a literature search, a search of special collections, and a series of conversations (in person, by letter and by telephone) with a network of people which expanded as we went.

The literature search posed special problems. As we noted in Section 1, we were dealing with a vast territory where the terminology was not fixed. We could not assume the certainty of meaning that is possible with a topic such as 'Fluoride and tooth decay'. Additionally, with 'Fluoride and tooth decay' we would be identifying *research* reports. With 'Plain language and the law' pure research reports were a small part of the literature.

The original request for a proposal specified 'the literature published in Canada, the United States and Europe'. The money and time (three months)

available did not allow European research outside of Great Britain. (Indexes are expensive to search; inter-library loans generally take a minimum of eight weeks). The indexes we used gave us documents from Australia, Canada, Great Britain, the United States and minor coverage from New Zealand.

We provide an annotated list of the indexes in Part D. Our start date was 1975 (with a few exceptions). Because of the time lag between publication of the journals and publication of the indexes our bibliography is current only until the summer of 1985. We received some unpublished material as late as January 1986.

We used on-line indexes when they were available. Ruth Von Fuchs, Metroline Search Service, Metro Toronto Central Reference Library, did all the searches for us. Her knowledge of the indexes and imaginative use of access points was invaluable. Because the terminology was problematic we used a relatively large number of search terms. These included legalese, jargon, reability, simplification, wording, writing, contracts, plain English, plain language, statute, by-law, clear, layman, lawyer, law - language, readable, understandable, comprehensible.. We retrieved border-line citations rather than risk missing relevant items.

We searched the print indexes not available on-line. Towards the end of September we scanned current issues of key journals. The indexes provided citations for articles in professional journals, newspapers and popular magazines; government documents; dissertations; case law reports; conference proceedings; statutes.

To retrieve documents in French we searched *Perioder* (1975-1983); *Radar* (1975-1983); *Point de Repere* (1984-1985). We scanned entries under loi, langage, droit. Our only relevant hit was a two-page article in *Consommateur canadien* Fev 1983: "Mettre la loi a la protee du commun des mortels' by Marvin A. Zuker. We could not locate a copy of this article.

Our lack of success in locating French articles raises the question: Is there a concept of 'Plain language and the law' in the French language? This is another research project. Our single piece of evidence (which just happened across our path) is a bi-lingual pamphlet published by the Unemployment Insurance Commission of the federal Department of Employment and Immigration, *You disagree? / Vous n'etes pas d'accord?* The English version has a bold-face caption, 'We speak plain English and plain French. You don't need a lawyer'. There is no similar statement in the French version. Casual queries to French lawyers provoked puzzled looks. Louise Abdelahad is searching for the appropriate French term if this piece of work, 'Plain language and the law', is translated into French.

We scanned the print-outs and eliminated the obviously irrelevant. On one search 40 out of 43 citations were articles on Bill 101, a Quebec bill defining the use of French and English. There was an overwhelming number of citations in the insurance journals we limited the number of articles. It was clear from the titles and a quick scan of the journals themselves that the articles ploughed the same ground. We chose a sample.

We found locations for the journals and photocopied ALL the articles available in local libraries (see list in Part D: Sources). Because Toronto libraries have some of the strongest journal collections in Canada the percentage of items we could not find here was relatively small. As we have explained, since inter-library loans take an average of two months we did not try for missing items.

Maureen Webb, a first-year law student, did a lot of this work for us. We scanned contents pages as we copied and discovered useful items our formal search had missed. We read bibliographies and added more items to our want list. We read and read and read. We have read every item in the bibliography.

We searched library catalogues, browsed in the stacks, bought everything we could find by Lord Denning. As we read we began to have a sense of who the interesting people were, where important work was going on, where the gaps were. We consulted library staff. Sometimes we had specific questions. More often we began, "I wonder if you have any ideas about ...". Library staff got to know us, what we were looking for, and let us know when something interesting came in.

We were frustrated by what our search missed. We found items by chance that should have been turned up by the indexes. Late in the fall we discovered several ERIC documents in a bibliography which should have surfaced in our on-line ERIC search. By this time it was too late.

We used special collections of unpublished materials such as research reports, internal government reports, speeches, press releases, transcripts of radio and television programmes, samples of forms and contracts. This is vital contemporary and ephemeral stuff.

The CLIC collection was invaluable. We were able to begin to read inten ively and widely while we were still in the process of acquiring our own complementary collection. CLIC gave us a head start.

John Knechtel was in England during the summer and was able to visit the National Consumer Council in London and spend a day with Jen Scott at the Forms Information Centre at the University of Reading (see Section 23.2). Most of our current British information came from the Centre. The NCC maintains an extensive file of newspaper clippings the from local and national British press. John photocopied about two hundred (see Secction B 13).

Winston Churchill remarked on the 'misleading effects of producing history exclusively from written records, which in many instances convey but a very small part of what took place'. (David Dilks, *Neville Chamberlain*, Volume 1, p. 412, Cambridge University Press, 1984). We add 'or of what *is* taking place'. If we had depended solely on indexed written materials our record of the plain language and the law movement in Canada would have been sparse and misleading.

Our conversations gave us ideas, information, leads and energy. (See Part D: Sources for a list) We find it hard to express their value. As you read this

inquiry you will realize how much of its detail, currency and Canadian content we owe to these generous people. They made us welcome, took on our questions and tentative comments, suggested contacts and searched their files for material. They asked us questions, and made it possible for us to ask different questions of our evidence.

Early on I began to dip into my collection of books, articles and papers on language, reading and writing. It was interesting and strange to think about those significant ideas from a different perspective, to make closer readings of James Britton, Donald Murray, Lev Vygotsky.

We read our daily newspapers carefully and were surprised at how much legal news, often complex legal news, is reported. At one point we decided to collect the three Toronto dailies for a week and compare their coverage and editorial slant. We didn't have time.

As we were rehearsing - collecting the new stuff, resurrecting the old - we were drafting, trying to make connections, see the patterns. We talked, argued, discussed, re-read, asked questions. Announced at least three times "This is it. This is *the* outline."

We were searching for the best way to make the important issues clear. Because of the nature of the subject and the documents we retrieved we decided that a traditional bibliographic essay would be unlikely to further real understanding by the various professionals for whom the inquiry is intended. A review could not, in itself, reveal the issues and connections. We decided to focus on the critical and current work, for example the Rayner Review and Elaine Kempson's research review.

A great deal of the literature was based on the assumption that readability has a concrete existence and that readability formulas are valid measures. We had to reveal these assumptions and present the arguments to refute them.

We examined the documents on 'How to write plain English' and found them to be mostly prescriptive: rules for clear writing. We put them in the context of new theories of the writing process and the notion of writing as thinking. William Safire says it all in his article 'Watch my style' (*New York Times Magazine* 2 Feb 1986):

> Style, in the literary sense, is the way we use words to express what we think or feel. Too often, grammarians and less self-conscious writers limit the meaning of the word to the rules of spelling, punctuation or usage ... but the elements of style, to use the name of the best-selling little book on that subject, include not merely the agreed-upon conventions of the writing trade, but encompass the strength, precision, grace and honesty - or lack of theose virtues - that characterize the way we communicate . . .
>
> You want to fix up your writing, parse your sentences, use the right words? Fine, pick up the little books, learn to avoid mistakes, revere taut prose and revile tautology. But do not flatter yourself that you have significantly changed your style. Your writing style is yourself in the process of thought and the act of writing, and you cannot buy that in a bookstore or fix it up in a seminar.

Ourselves in the process of thought and the act of writing, that was the heart of the inquiry.

Note: The defenders of traditional legal language feel secure in their position and see no need to defend that position in print. Apart from the original controversy about plain language laws we found only one article which defended traditional legal language.

1.5 *The writing process*

Traditional English teachers assumed that the writing process began when the student put pen to paper to write the one and only text of an assigned topic. Success - good marks - depended on the neatness and 'correctness' of the piece. Teachers taught the rules of neatness and correctness. They did not teach logic, order and coherence.

Writing as a process of finding the right things to do on the page to call forth certain things in the mind - Richard Mitchell's definition - has never been part of the teacher training curriculum.

We have used the past tense deliberately in this first paragraph because we are optimists. English teachers *are* discovering that writing is a process that is interwoven with thinking, a process with stages and forces in tension.

The work of the the Russian psychologist L.S. Vygotsky has powered modern research in writing process theory. *Thought and language* was published in 1927 but remained untranslated until 1962 when it was published by the M.I.T. Press. It is a seminal work.

Written language demands conscious work because its relationship to inner speech is different from that of oral speech: the latter precedes inner speech and presupposes its existence (the act of writing implying a translation from inner speech) ... The change from maximally compact inner speech to

maximally detailed written speech requires what might be called deliberate semantics - deliberate structuring of the web of meaning.

The writing process: deliberate structuring of the web of meaning. Donald Murray (1980), a professional writer and a writing teacher at the University of New Hampshire, describes his blueprint of the stages of that structuring.

But first, do not be misled by the term 'stages' with its connotation of linear progress. Writing is cyclical and recursive; writers move back and forth and between the stages as they weave the web. Murray names the stages rehearsing, drafting and revising.

Rehearsing is the stage of taking in the raw material, the information. We are still not clear how, or if, we will use it. Drafting is the tentative central stage when there *is* 'writing'. We begin to find out what the writing *may* have to say. Revising is the final stage. We see what the writing *has* to say and find the way to shape it into clear graceful text. We work back and forth. We listen for the evolving meaning.

Murray recognizes four primary forces which interact during the writing process: collecting, writing, reading, connecting. The connecting force is the least visible and the hardest to will. Without it there is no web. Without it there can be no logic, coherence or order.

Richard Mitchell, whom we quoted earlier, is an English teacher, a professor of English at Glassboro State College. He edits and publishes a monthly magazine, *The Underground Grammarian*. In *Less than words can say*, Mitchell gives us some specifics of the writing process: formulate sentences

that make sense; choose the right words from an array of words; devise the structures that show how things and statements about things are related to one another; generate strings of sentences that develop logically related thoughts and arrange them in such a way as to make the logic clear to others.

A tall order! We read and re-read these lines and we freeze, afraid.to choose even one word and set it on the page. We must keep reminding ourselves, as Donald Murray does, that we are life-long *apprentices* in the craft of writing.

Apprenticeship is not a popular or prevalent idea in North America. We'd all rather be experts, preferably instant experts. We begin our section on the reading process with a statement about apprenticeship by another English teacher.

1.6 *The reading process*

'We are all learning to read all the time'. This proposition was made by I.A. Richards, a British literary critic and theorist, and yes - an English teacher. When we commit ourselves to that proposition we declare different assumptions about 'reading' than those of traditional English teachers.

They say that the point of reading is *comprehension*. Teachers measure reading success by giving comprehension tests. There are two basic types of test. In one the student reads a passage and then answers a series of multiple-choice questions. The other is a variation of the Cloze technique: isolated words are deleted from a passage and the student fills in the resulting blanks.

Mitchell says that the point of reading is *understanding*. And then gives us a wonderful analogy: comprehension is to understanding as getting wet is to swimming. You must do one before you can hope to do the other, but you don't do the other simply because you do the one. Traditional English teachers assume not only that the point of reading is to answer the question 'What does it say?' but that the text 'says' the same thing to every reader.

Ken Goodman, Yetta Goodman, Frank Smith are three of the English teachers who have been questioning that assumption. They are developing new theories of the reading process. The Goodmans, Smith and others propose

that written text has two structures. The first is the visible surface structure of the text, the marks on the page, the words themselves and the particular order in which they are arranged.

The second is the invisible deep structure of meaning. When we read we depend most on the deep structure. Who we are, what we already know and what we expect influences and informs the sense we make through the deep structure. We as readers weave a web of meaning. The filament is language.

To comprehend is to rely on the surface structure. When we write to a formula that recognizes only surface structure we provide only surface structure. To understand is to go through to the deep structure. When we write in plain language we begin with the deep structure and through it teach the reader how to read our text.

1.7 *Language*

Language is a symbol system. We invent and arrange words to create, represent, discuss and record our versions of the world. We tend to mistake the symbol for what it represents.

Language is an instrument, a 'means by which something is achieved, performed or furthered'. We like the connotation of 'instrument' - a device capable of delicate and precise work.

Language is an artifact of culture. We reveal our relationships, our origins, our status, our expectations by the ways in which we use it and respond to it.

Language performs magic. The language used by the magician is oblique and arcane, unlikely to be the language of everyday.

Symbol, instrument, artifact, magic: every language is all of these. We keep all in mind as we look at one language, English.

1.8 *English*

What shaped English into our subtle and expressive instrument? James Lipton in *An exaltation of larks, or The venereal game* says it was 'the unique flexibility and omnivorous word-hunger of generations of Britons'. He invokes a powerful metaphor:

... with each new wave of traders or invaders came new semantic blood, new ideas and new ways of expressing them. The narrow, languid brook of the Celtic tongue suddenly acquired a powerful tributary as the splendid geometry of the Latin language burst into it, bringing such lofty sounds and concepts as *intellect, fortune, philosophy, education, victory, gratitude*. From 449 on, the blunt, intensely expressive monosyllables of the Anglo-Saxon joined the swelling stream, giving us the names of the strong, central elements of our lives: *God, earth, sun, sea, win, lose, live, love, die*. Then, in the eleventh century, with the Norman Conquest, a great warm gush of French sonorities - *emotion, pity, peace, devotion, romance* - swelled the torrent to a flood-tide that burst its banks, spreading out in broad, loamy deltas black with the rich silt of WORDS.

A silt of words which we own and use every day.

Have you been wondering what the venereal game is? We will tell you. It is the hunt, in Norman French 'Le Art de Venery'. In his book Lipton has collected and explained the origins of the terms of venery: the terms for 'every collection of beasts of the forest, and for every gathering of birds of the air ... their own private name so that none may be confused with the other'. We enjoy with him a pace of asses (Latin *passus*, a step or stride); a

route of wolves (Old French *route*, troop or throng); a dray of squirrels (Middle English *dray*, nest).

Does it matter if we don't understand the ancient terms hunters once used to precisely name? No. Does it matter if we don't understand the ancient terms lawyers still use to precisely name? Yes.

We will come back to this point in Section 10. But before discussing traditional legal English we want to set the stage with a description of the whole which contains it: Fancy or Stylish English.

(Note: James Lipton makes us a gift of some modern terms of venery. Our gifts to you: 'an eloquence of lawyers'; 'a HO HO! of loopholes'.)

1.9 *Fancy English*

Ceremonies perform magic. Ceremonial occasions demand ceremonial language. The meaning and impact of the ceremony are contained in the whole ceremony: the processions, the banners, the trumpets, the magnificent robes and the grandiloquent words. The robes hanging in cupboards do not perform magic. Nor do the words alone on the page.

Ceremonies are staged in the royal court, the church, Parliament. In early England the language of the royal court was French, the language of the church and of the law courts Latin. English was the language of the working world. Some things do not change. Five hundred years later the edge-inscription of Britain's 1986 round pound is *Decus et Tutamen*. The words translate as 'Ornament and Safeguard'. The message is 'Ceremony demands ancient forms'.

By mystical transference the notion came into being that if important words were part of every important occasion then by their presence important words made an occasion important. That writers who used important words were writing important text. That writers who used the simple working words were saying only simple things for simple working people.

We have new grandiloquent words. Officials and scientists, among others, use them. We laugh a little at such self-important language. We call it

officialese, Haigese, computerese, legalese. Fowler uses Dickens' word *circumlocution* to describe the peculiarities of officialese (peculiarities peculiar to all *-ese* styles). But no matter what we call it, we are in awe of it, we copy it, we require it. We are all bound by the the unexamined normal, the expected, the conventional.

Robert Eagleson (1983) tells us about an experiment conducted by Dr. Christopher Turk at the University of Wales. Turk gave two reports on the same experiment to a group of scientists. One was written in science-ese, one in Plain English. Each scientist filled out rating sheets for both reports. All agreed that the Plain English version was more interesting, precise, organized, objective, dynamic, stimulating and easier to read. All agreed that the science-ese version was more appropriate for publication.

We all participate in this conspiracy to deny working words. A writer believes that she enhances achievement with 'Women *exercised a leadership role*. We coin the term '*bag lady*' to shield ourselves from the reality of homeless women beggars on our streets.

Now we look at the special peculiarities of traditional legal writing and language. And observe that lawyers, with the rest of us, make language conventions into language laws.

1.10 *Traditional Legal English: words and forms*

Defenders of traditional legal English maintain that Plain Legal English is not precise and does not bind in law.

We were shocked to discover that both Sir Ernest Gowers and H. W Fowler are among the defenders. Gowers wrote *The complete plain words* in 1954; his views were endorsed by his editor Sir Bruce Fraser in 1973 and in 1977. Here is Gowers:

Acts of Parliament, statutory rules and other legal instruments have a special purpose, to which their language has to be especially adapted. The legal draftsman, whether he is a public offical or not, has to ensure to the best of his ability, that what he says will be found to mean precisely what he intended, even after it has been subjected to detailed and possibly hostile scrutiny by acute legal minds. For this purpose he has to be constantly aware, not only of the natural meaning which his words convey to the ordinary reader, but also of the specific meaning which they have acquired by legal convention and by previous decisions of the Courts.

Legal drafting must therefore be unambiguous, precise, comprehensive and largely conventional. If it is readily intelligible, so much the better; but it is far more important that it should yield its meaning accurately than that it should yield it on first reading, and the legal draftsman cannot afford to give much attention, if any, to euphony or literary elegance. What matters most to him is that no one will succeed in persuading a court of law that his words bear meaning he did not intend, and, if possible, that no one will think it worth while to try.

All this means that his drafting is not to be judged by normal standards of good writing, and that he is not really included among those for whom this book is primarily intended - those who use words as tools of their trade, in administration or business..

By normal standards of good writing legal drafting is usually both cumbrous and uncouth. No doubt it is sometimes necessarily so;. it would be surprising indeed if it were not. But it often needs a skilled lawyer to say whether a particular passage could have been put more prettily without losing its accuracy; the layman should be slow to criticise - or imitate.

Precision, accuracy, convention. How eloquently Gowers makes his case. In the process he assumes, like his fellows, that a word *can* have a specific meaning and that the meaning is constant through time; that writing *yields* - gives up - its meaning; that the purposes of legal writing impose rules incompatible with the rules for clear writing; that legal writing is only for other lawyers

David Mellinkoff, in *The language of the law* (a more precise title would be *The language of English law*) defies this tradition. (You must read Mellinkoff; his analyses and arguments are the basis for any understanding of plain language and the law.) His central principle: 'The language used by lawyers should agree with the common speech unless there are *reasons*[our italics] for a difference'. He identifies the major departures: the hereafters and whereafters; the Latin, French and Anglo-Norman words and phrases that now have equivalent English forms; the Siamese twins and triplets; the preference for the formal; the attempts at extreme precision; the convoluted style.

Mellinkoff maintains that the only 'different' terms which are essential are a small number of terms of art, the technical legal terms which *do* have a precise meaning. The rest have acquired a mythical precision because 'We've always done it that way'; because they are part of precedent (a word Mellinkoff defines as 'a path to follow in any direction'); because they are

prescribed by statute or regulation. The style - the plethora of passives, the accumulation of clauses, the surfeit of words - belongs to the tradition of ancient ceremony.

Old ways are comfortable ways. Old phrases are known and at hand, 'lying in wait' as Gowers says, 'to fill a vacuum in the brain'. Mellinkoff prevents us. He says we must have a reason to choose; he gives us some questions to help us choose well.

1.11 *Plain Legal English*

Making choices. Is that what distinguishes the craft studio from the assembly-line of the office-machine? The apprenticeship from the training period? Mellinkoff, master craftsperson, demonstrates to his apprentices how they can keep their writing close to the common language. He instructs them in the questions they must ask *themselves* about the words which lie in wait:

IS IT A TERM OF ART?

Did I ever learn 'law' about this expression? Are the edges sharp or soft? Is that the only way it can be used? Is it used in this instance as a term of art? Are there other words that can serve as well? Will even slight variation change its legal effect?

IS IT THE TRADITIONAL WAY OF SAYING IT?

Did it ever have a definite meaning? Does it have a definite meaning now? Does this way make the meaning more exact than ordinary English? Is there any good reason for saying it this way now?

DOES PRECEDENT SUPPORT THIS USAGE?

Is it decision or dictum? Is the precedent decisive or persuasive in this judicature? How fresh is this precedent? Would it be followed to-day? Are there other precedents the other way? Does it make sense?

IS THERE SOME REQUIREMENT THAT IT BE SAID THIS WAY?

What sort of requirement is it: statute, ordinance, rule of court, administrative order? What are the consequences of departure from rote? Has it ever been interpreted? Has it been tested recently? Would it be enforced to-day?

Mellinkoff offers these questions in his *The language of the law.* In *Legal writing: sense & nonsense* his first a chapter is 'Read this before using'. At the beginning of that chapter is *THE QUESTION*: Does it have to be like this? And he goes on 'If you are writing, *THE QUESTION* will keep you from becoming another piece of office equipment, unconcerned with consequences or the possibility of improvement'.

His rules imply a tacit knowledge of all the stages of the writing process:
Don't confuse peculiarity with precision
Don't ignore even the limited possibilities of precision
Follow the rules of English composition
Usually you have a choice of how to say it. Choose clarity
Write law simply. Do not puff, mangle, or hide
Before you write, plan
Cut it in half!

Other distinguished lawyers have published writing guides. Richard Wydick's list of rules, in *Plain English for lawyers*, is:
Omit surplus words
Use familiar, concrete words
Use short sentences
Use base verbs and the active voice

Arrange your words with care

Avoid language quirks

In *Clear understandings: a guide to legal writing* Ronald Goldfarb, a lawyer, and James Raymond, an English teacher, give us ten commandments:

Write like a human being

Think of your audience

Do not use jargon unless you have to

Forget the windup; just make the pitch

Avoid purple

Write concise, clear, simple words, sentences, and paragraphs

Punctuate precisely

Use other people's written work incidentally and deftly

Check writing authorities

Edit one more time

Wydick, Goldfarb and Raymond are good at what they set out to do; they help us when we are in the revising stage. Mellinkoff supports us through the whole writing process. We will come back later to the consequences of the narrow definition of the writing process implicit in most legal writing guides and courses.

We have quoted the advice of these writing lawyers and teaching lawyers to give you a sense of what their ideal legal texts are like, what the elements of their clear legal style are. Now we show that *clear legal writing* differs only in its subject matter from *clear writing*, from Plain English.

1.12 *Plain English*

In 1919 Elwyn Brooks White, a student at Cornell, took an English course, English 20, English Usage and Style. The English teacher was Professor William Strunk; the required text was the professor's own privately published *The elements of style*. In 1957 E.B. White wrote an affectionate piece about Professor Strunk and the 'little book' for the *New Yorker*. Macmillan commissioned White to prepare a revised edition and this was published in 1959. One English teacher won hundreds of thousands of students.

Strunk's voice rings clearly still:

Vigorous writing is concise. A sentence should contain no unncessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that every word tell.

Here are Strunk's principles:

Choose a suitable design and hold to it

Make the paragraph the unit of composition

Use the active voice

Put statements in positive form

Use definite, specific, concrete language

Omit needless words

Keep related words together

Avoid fancy words; avoid foreign languages

Strunk deals only with the revising process. George Orwell sets his advice in the context of the whole writing process

[Rehearsing] When you think of something abstract you are more inclined to use words from the start, and unless you make a conscious effort to prevent it, the existing dialect will come rushing in and do the job for you, at the expense of blurring or even changing your meaning. Probably it is better to put off using words as long as possible and get one's meaning as clear as one can through pictures or sensations.
[Drafting] Afterwards one can choose - not simply *accept* - the phrases that will best cover the meaning,
[Revising] and then switch round and decide what impression one's words are likely to make on another person. This last effort of the mind cuts out all stale or mixed images, all prefabricated phrases, needless repetitions, and humbug and vagueness generally.

This is a quote from Orwell's essay 'Politics and the English language'. He wrote it to protest the 'vague and incompetent' prose of political writers, to promote language 'as an instrument for expressing and not for concealing or preventing thought'.

His rules may be familiar to you:

Never use a metaphor, simile or other figure of speech which you are used to seeing in print

Never use a long word when a short word will do

If it is possible to cut a word out, always cut it out

Never use the passive where you can use the active

Never use a foreign phrase, a scientific word or a jargon word if you think of an everyday English equivalent

Break any of these rules sooner than say anything outright barbarous

These rules are often quoted. But when they are quoted alone, without the first paragraph (as is often done) writers are deprived of the opportunity to recognize the three recursive stages of the writing process and to benefit from Orwell's whole advice. 'Writing' rules that deal only with revising and editing imply that revising and editing are the whole of writing. There is an assumption that the rules can be tacked on when the 'writing' is finished. Writing instruction whether in a classroom, a text book, or a series of articles in a law journal, must deal with the whole writing process. Otherwise apprentices are left with the notion that one can become a writer by following a set of rules.

The precepts and rules and insights of William Strunk, E.B. White, George Orwell, Sir Ernest Gowers are part of our apprenticeship. They help us to write clearly, to do the things on the page that will call forth certain ideas in the mind, to write Plain English, to write Plain Legal English.

Who can argue with that? Those people for whom the term Plain English means not the prose of White and Orwell but the primerese of the reading series ('Run, Spot, Run'), Flesch Plain English.

How has that come about? Before we answer that question we establish our claim to the term Plain English. Then, to help you understand the origins of Flesch Plain English, we tell you about the processes of reification and ranking and how they were used to 'create' readability.

1.13 *'Plain English': an etymology*

Part of the difficulty of implementing Plain Legal English, or even of having it taken seriously, is the confusion which has resulted from the use of one term, 'plain English', to refer to two kinds of English. We eliminate this confusion by assigning the term Flesch Plain English (see Glossary) to the primerese of Dick and Jane. We reserve 'plain English' for the clear style of Orwell, Denning, Strunk and White. We present this etymology to establish the impeccable ancestry of our 'plain English'.

Our source is the *Oxford English Dictionary: a new English dictionary on historical principles*

In 1330 'plain' was already used in two ways: to describe ground that was flat and level; to describe a view which was free from obstruction, open to the public.

By 1352 English people had extended its range. They used it to describe statements that were 'clear to the senses of the mind; of which the meaning is evident'.

In 1380 Wyclif preached that his gospel 'tells a playen storie'.

By 1555 our word is used to describe the teller of the 'playen storie'. A good example is a quote from Shedd's *Homiletics* (1867): 'A plain writer or speaker makes the truth and the mind impinge upon each other'.

'pleyne Englische' turns up for the first time in Chaucer (around 1500). He uses the term to describe language that is free from ambiguity, straightforward, direct. He needed a term to describe an English that was *not* ambiguous, evasive, indirect.

Our last quote is from a United States government document *Report on the munitions war* (1858): 'If we double the thickness, the outside . . . will be but one twenty-fifth as useful, or in Plain English, nearly useless'. We speculate that if legal counsel had been alert the last six words would have been deleted.

1.14 *Reification*

To reify is to create a fallacy; to regard something abstract as material; to make the 'something' necessarily existent.

In *The mismeasure of man* Stephen Jay Gould traces the history of the reification of intelligence. In the Foreword he says:

We recognize the importance of mentality in the divisions and distinctions among people that our cultural and political systems dictate. We therefore give the word 'intelligence' to this wondrously complex and multifaceted set of human capabilities. This shorthand symbol is then reified and intelligence achieves its dubious status as a unitary thing . . . We now encounter the second fallacy - *ranking* or our propensity for ordering complex variation as a gradual ascending scale . . . But ranking requires a criterion for assigning all individuals to their proper status in a single series. And what better criterion than an objective number.

When Alfred Binet (1857-1911), director of the psychology laboratory at the Sorbonne, first decided to measure intelligence he measured skulls. The relationship between the intelligence of subjects and the volume of their heads had been proven by Broca.

After five years' work Binet forced himself to look at the results. He reluctantly concluded that 'there was often not a millimeter of difference betwen the cephalic measures of intelligent and less intelligent students!'

In 1904 Binet was commissioned by the minister of public education to develop techniques for identifying those children whose lack of success in

normal classrooms suggested the need for some form of special education To identify in order to improve, not to label in order to limit.

Labelling triumphed and the limiting labels stuck. The number on the label *is* the reality. What is an overachiever? A student whose IQ label is 94 but whose real life performance is consistently higher. The student *is* a 94. He only insists on behaving as if he were not. (We owe this example to Neil Postman).

How did the wondrously complex and multifaceted set of human capabilities involved in reading become debased to a measurement and a label? We examine the reification of readability.

1.15 *Readability*

In 1926 W.A. McCall and L.M. Crabbs developed and published *Standard test lessons in reading*. The tests were widely used in the United States and Canada to test the 'reading' performance of school kids. The reading comprehension tests we described in Section 6 were based on them.

Everyone agreed that if a kid passed the Grade 5 test but failed the Grade 6 test then that kid *had* a Grade 5 reading level. If he never passed the Grade 6 test then even as an adult he *had* a Grade 5 reading ability label.

Everyone also agreed that there must be a quality in the paragraphs of the test lessons that varied from grade to grade. They named this abstract quality 'readability', granted it a concrete existence and invented ways to 'measure' their creation.

In 1943 Teachers College Columbia University published *Marks of readable style: a study in adult education* by Rudolf Flesch. In it he developed 'a statistical formula of readability (comprehension difficulty)'. In 1948 Flesch published a revised formula in an article he titled 'A new readability *yardstick*' [our italics]. The yardstick was easy to use. Flesch counted the syllables , words and sentences in a 100-word sample. He applied his formula. He predicted the readability of the text. He validated the formula by using the *Standard test lessons* as a criterion.

It was so easy, so neat, so satisfying, and so profitable. Educational publishers manufactured 'curriculum materials' and 'reading series' with guaranteed reading levels. Professors in faculties of education supported the enterprise. "Professional" journals published 'research' to show a child's 'reading level' increasing from 5.3 to 5.8. It became normal and accepted practice to say of an adult who left school at the end of Grade 8 "That person has a Grade 8 reading level".

Need to write for a Grade 8 adult? Look at the Grade 8 reading test passages. Short words, short sentences. Write in short words and short sentences and measure as you go. In factories it's called quality control. Meet the specification of the formula.

This 'writing' is being manufactured by an office machine. An office machine that sees no difference between 'Never use a long word when a short word will do' and 'Use short words'. No difference between 'Omit needless words' and 'Use short sentences'.

We reject the reification and ranking of readability. Readability has no concrete existence. Here are the arguments:

1 Complexity cannot be defined in terms of word and sentence length. These are the ONLY features which the readability formulas count.

2 Readability formulas ignore:

the readers - their background, needs, interests, fears

the physical context - space, lighting, crowding

the whole text - its length, complexity, sensibility

text organization and design - logical order, headings, diagrams, type choices

grammar - clauses, sentence patterns, ambiguity

words - jargon, abstract or concrete, obscure 'in' references

style - active sentences, personal references

3 Readability formulas are 'validated' against passages of 'known' levels of difficulty, usually the 1926 or 1952 McCall and Crabbs passages

4 The 'reader' is tested with multiple-choice or Cloze tests, that is mangled text. Depending on the test, the text 'passes' if the test-taker obtains a score of either 50% or 75%. Is a legal document sensible and useful if the citizen understands only half?

5 Most formulas claim to be accurate only to with one reading age and only 60%-85% of the time. This warning is *never* stated by formula advocates.

6 The formulas were designed as a *predictor* of the difficulty of school texts read by school children. Not as a *writing guide* for real world documents such as laws, regulations, contracts and administrative forms.

Note: Our arguments follow the Forms Information Centre Topic Sheet 4 'Readability and readability formulas' (1985) and an unpublished paper by Jean Hannah 'Readability formulas: a brief critique' (1984). See also the report of Elaine Kempson's research survey, Section 23.

Some lukewarm advocates of readability formulas maintain an attitude of "This won't do no good, this won't do no harm'. We maintain that *any* use of the formulas perpetuates the fallacy that 'readability' is achieved with short word and short sentences. Period.

One of the reasons that readability has continued its 'emperor's new clothes' existence is the 'evidence' of contemporary educational research. Before we

go on to Part B, Plain Legal Language at Work, we briefly discuss research, what counts as evidence, in the human and social sciences.

1.16 *Research in the human and social sciences*

Janet Emig may be a stranger to some of you. She is an American poet and English teacher. Her research work has centred on theories of the writing process. She titled her 1983 collection *The web of meaning: essays on writing, teaching, learning and thinking*.

As we have noted in Section 1, it was Emig's essay 'Inquiry paradigms and writing' that prompted us to call this piece of work an inquiry rather than a research project. She says of 'inquiry': 'its connotations are less parochial and more generous. The term 'research' misleads because it has come to mean one form of research only, the empirical.

The early social scientists, to validate their 'discipline' as 'science', took on the empirical method, what they percieved as the *only* research methodology of 'real science'. This has been called the corn-growing method. All the variables can be controlled while the agricultural scientist compares the performance of different seed strains.

Emig creates the metaphor of 'the controlling gaze' to contrast two methods, the empirical and the phenomenological. Emig explains that the empirical method requires a positivistic gaze. The research design demands a fixed-focus. We strip away the context; we elect not to see it. This method, applied to human beings, assigns them randomly to different 'treatment' as

though they were as interchangeable as seeds. The laboratory, the classroom, the human being, the tester are seen as neutral, exerting no influence. The reading tester has a controlling gaze.

In contrast, the phenomenologist acknowledges, examines and describes the context. The observer is 'intertwined with the phenomonon which does not have objective characterisitics independent of the *observer's perspective and methods*. Such inquiry takes the form of case studies and ethnography. Case studies and ethnographic studies are producing valuable insights into the processes of writing and reading.

In Section 26.2 we recommend this research approach to the investigation of the processes involved in writing legal documents, in teaching the writing of legal documents.

2

PLAIN LEGAL LANGUAGE AT WORK

2.1 *Standard consumer contracts*

In this section we discuss the contracts used by banks, insurance companies and service companies in their consumer (as opposed to commercial) transactions. Dugan (1978) describes standard forms as a 'printed collection of terms, formulated in advance for use in a large number of similar transactions, presented to a non-drafter as a condition to doing business. They are also referred to as contracts of adhesion, perhaps to signify that the consumers are stuck with the terms.

We all sign standard contracts without reading them. Some reasons?

WE DON'T HAVE TIME. Standing in line at the car rental booth in a busy airport . . . play out the scenario.

WE TRUST THE COMPANY AGENT. We assume the people behind the counter know what they're talking about when they tell us what we're buying or renting and what the conditions are.

WE HAVE NO CHOICE. We need the insurance, the bank loan, the services of the moving company. We assume that all the contracts are much the same anyway; may well be exactly the same except for the company name at the top of the page.

WE CAN'T READ THEM. Contracts are black slabs of fine print usually covering both sides of a legal-size sheet of paper (ever wonder about legal size?).

Some new consumer contracts are different. They are sensible and useable. Before we describe those new contracts we want to mention a shift in court rulings on contracts which may, or may not, have given some impetus to the writing of Plain Legal English documents.

Consumer contracts are a twentieth century phenomenon and until well into the century the courts considered them to be 'contracts': 'a result of the free-bargaining of parties who are brought together by the play of the market and who meet each other on a footing of social and approximate economic *equality*' (Kessler, quoted in Rotkin, 1977).

Some courts now recognize the *inequality* of standard contracts when 'the drafting party enjoys a considerable edge in bargaining power, arrogates to himself a more extensive set of rights than he would otherwise enjoy, and does not intend that the form be either read or understood by the non-drafter' (Dugan, 1978).

In *Tilden-Rent-a-Car Co. v Clendenning* heard in the Ontario Court of Appeal 30 March 1978 Judge Dubin found for the plaintiff because of the small type:

> Tilden-Rent-a-Car took no steps to alert Mr. Clendenning to the onerous provisions in the standard form of contract presented by it. The clerk could

not help but have known that Mr. Clendenning had not in fact read the contract before signing it. Indeed the form of the contract itself with the important provisions on the reverse side and in very small type would discourage even the most cautious customer from endeavouring to read and understand it.

Judge Lacourciere dissented:

In my view the printing is not difficult to read, and the presence of conditions on the reverse side of the signed contract is brought to the signatory's attention in a very clear way ...In the wisdom of the common law ... [the person who signed the contract] was bound by the printed conditions, even if he or she did not read them.

We did say there had been a shift, not a landslide. (For more on Judge Dubin see Section 20.)

Tilden did not appeal to the Supreme Court of Canada. The case was judicially considered (to February 1986) thirteen times. (See Appendix 1 for a complete list.) In five cases it was 'applied', considered relevant or suitable; in three 'distinguished', used to point out an essential difference; in three others 'referred to', that is mentioned; and in two 'considered', that is carefully examined.

Has Tilden changed its contract? We don't know. Our local Tilden office said that it was not company policy to hand out samples of the contracts. There was no time to take this up with their head office.

When Judge Dubin described the design of the Tilden contract (important provisions on the the reverse side and in very small type) he implied that the design of a contract was as important to the consumer as the text. Any discussion of consumer contracts and administrative forms must deal with design; it is an element in plain language legal documents. In fact the landmark first Plain Legal English contract began as a design problem.

2.1.1 *The Citibank simplified promissory note*

Citibank did not decide to re-design its consumer forms. The chairman of Citicorp, Citibank's parent company, decided. This is the essential **first point**.

Point one: The decision to 'do something about consumer contracts' (and administrative forms) is made at the top. No decision, no change.

Note: There are a lot of articles about the Citicorp contracts. For this section we have depended largely on the Citicorp case study in *How Plain English works for business*, U.S. Department of Commerce 1984. It was based on information provided by Carl Felsenfeld, a Citibank Vice-President. We have also used Alan Siegel's 1977 article 'To lift the curse of legalese'.

The date in the history of Plain English contracts is January 1975. The story actually begins in 1970 when Walter Wriston, chairman of Citicorp, appointed a committee to analyze consumer-related problems. In 1973 that committee decided to simplify its consumer loan agreement.

Point two: the change takes a long time.

Citicorp hired the New York communications firm, Siegel and Gale. Alan Siegel says that in the beginning Citicorp only intended to improve the *appearance* of the forms. They had no enthusiasm for Siegel and Gale's suggestions to revise the 'muddled text'.

Point three: major Plain English undertakings usually depend in the beginning on outside consultants. Siegel and Gale gained their reputation with the Citibank work and were chosen, as we shall see, by many other corporations.

The Citibank committee discovered that Citibank was making a lot of bad consumer loans. It went to small claims courts to collect. It was the third largest suer of consumers in New York City, following the phone company and the electric company. One wonders at a social system that makes a bank loan as necessary as electricity and a phone. One also wonders at bank policies which allowed branch managers to make so many bad loans.

Banks compete with each other for customers. Each bank wants to increase its share of the market.

Point four: businesses undertake voluntary Plain English initiatives because it's good business.

Alan Siegel calls the Plain English process 'language simplification, the art of making the obscure understandable'. His objective: 'the revision of complex legal documents to make them intelligible to the average consumer while retaining the binding force of the original text'.

Point five. There is an assumption that it is only the consumer who doesn't understand the contract. Felsenfeld reports that the lawyers and judges who handled these cases in small claims court were also intimidated by the language of the note. And even Citibank's own lending officers admitted that they found some clauses incomprehensible'.

Point six: Upper management support does not guarantee immediate acceptance by middle management. Carl Felsenfeld reports:

[There was a feeling] that a massive loan portfolio should not be put at risk under new and untested language. Some marketing people felt that consumers were not drawn to banks by the nature of their forms and that the whole exercise was essentially meaningless. Business managers responsible for collecting debts decried the loss of any legal protection. Other participants saw no need for a new form at all. Many didn't care one way or another.

Point seven: In the move from obscurity to clarity writers must deal with three components of contracts: substance, language, design.

SUBSTANCE

Consumer contracts often are copies of commercial contracts. Siegel says "Perhaps our hardest task was not writing things in English but rather identifying clauses taken from traditional (commercial) contracts that could be eliminated without basic injury to the validity and legal enforceability of our consumer documents'.

Bank lawyers and business managers held long discussions to decide what should be kept. How often had an event happened that the contract provided protection against? When was the last time it happened? Were some provisions duplications? Were all of the conditions actually enforceable in law? Should the bank forfeit some protection to make the consumer more apt to buy the loan?

Here the writers are involved in the rehearsing and drafting stages of the writing process.

LANGUAGE

Now comes the revising stage. The steps, with variations, have become common practice:

Arrange the parts in sensible order

Use everyday words

When you must use a term of art, define it.

Make it friendly. Write in the first person, refer to the consumer as 'you', don't be afraid to use contractions.

DESIGN

Destroy the black slab. Make the document look as though it will be easy to use. You must make decisions about headings, type size, margins, ink and paper colour contrast, paper size and quality.

Now you are ready to print the loan form and explain and sell it to front-line staff and customers. And see what happens.

For Citibank fortune and fame.. They increased their share of the consumer market. Consumer advocates praised them. Behind-the-counter bank staff were able to answer questions without consulting management.

Point eight: Plain English contracts are binding legal documents. This first loan agreement, the rest of the consumer contracts which Citibank and Citicorp revised, the Bank of Nova Scotia contracts, have not been challenged in the courts.

(For Citibank as well an unwelcome role in the introduction of the first Plain Language Law. See Section 22.1)

Now we tell you about the first (and as far as we know the only) Canadian bank to write Plain Legal English contracts, the Bank of Nova Scotia.

2.1.2 *The Bank of Nova Scotia*

Citibank had no model for its first Plain English loan form.
Point nine: all companies since have been influenced by the Citibank decision, the methods it used and the results.

Cedric Ritchie is the president of the Bank of Nova Scotia. He had discussed the new Citibank forms with Walter Wriston. He decided that BNS should revise its loan forms.

The Bank of Nova Scotia was the first Canadian bank to market consumer loans. It began 1955 under the Scotiabank trademark. By the seventies it had about 40% of the market. It wanted to increase this substantial and profitable section of its business. The $100,000 cost of the initial re-write was an investment to win this business.

Rosemary Regan, a BNS solicitor, was a member of the team brought together to revise the BNS forms. Rosemary Regan had been a school music teacher; she'd had a lot of practice re-saying and re-writing things so that kids would understand. This made it easier for her to read documents from the point of view of the customer at the branch bank counter and the branch manager on the other side of the counter. Lawyers who have gone from school to law school to lawyering may be more apt to say "Here are the words'.

Point ten: Lawyers have intellectual and work biographies that influence how they write.

Rosemary had taken a communications course at Woodsworth College; it was part of a programme sponsored by the Canadian Institute of Bankers. She still remembers her instructor and her surprise that a more informal writing style had become conventional.

Point eleven: writing courses for lawyers do not have to be legal writing courses.

Siegel and Gale were hired as consultants. Regan recollects that they did a survey to find out the 'reading level' of the bank's customers but the results were not used as a specification for the language of the document.

Point twelve: sensible documents can be written without applying readability formulas. Regan says that the style evolved as they worked.

Point thirteen: Consultants' advice is not dogma. Siegel and Gale advised a two-column format. BNS decided that a single column made their document more useable.

BNS engaged Robert Dick as drafting counsel. Dick describes his work in *Legal drafting*. There was no mandate to change the substance but as they worked they discovered administrative sections which did not need to be included and archaic provisions which could be dropped. They cleaned out the duplications and regrouped substantive issues into a logical format.

Bill Harris, head of design at Moore Business Forms was the design consultant.

Point fourteen: The design and production knowledge of forms printers is

an important element in the process of writing plain language legal documents.

Point fifteen: Training must be planned and scheduled. Bank documents come from Head Office. They're used in small local branches. Rosemary Regan spent a lot of time conducting workshops and writing articles for the BNS newsletter.

Point sixteen: Journalists are interested in new consumer forms. Major daily newspapers , the Canadian Press and local radio stations reported the event. Columnists and editorial writers commented on it.

BNS routinely uses Plain Legal English when it revises forms or writes new ones. It has never had a court case because of a Plain Legal English contract. Plain Legal English contracts work.

Teresa Foden, the BNS solicitor who is now responsible for writing consumer contracts has her own definition of Plain Legal English: 'It's clear concise legal drafting. A lay person can easily understand it.. You have to say what you mean to say and say it so that people can understand.

Point seventeen: Plain Legal English style IS plain writing style.

Point eighteen: A successful example does not necessarily influence others to follow. BNS has had inquiries from other Canadian banks but does not know of one that has undertaken Plain Legal English contracts.

2.1.3 *Insurance contracts*

Insurance companies do not deal directly with the consumer. They use independent agents or brokers who have insurance products from several competing companies on their shelves.. An insurance company must persuade the agent to recommend its product over the others, sometimes by offering a higher commission. There is apt to be little variation in policy coverage, cost or text.

Insurance companies operate under government agencies that must approve the policy contracts.

Point nineteen: Government regulations may prevent implementation of Plain English contracts.

Gordon Findlay (see Section 17.4) reports in his letter of 2 October 1985:

> Royal did develop a "plain language" automobile insurance policy on its own initiative in 1976-77. However, when it was offered to the Association of Superintendents of Insurance for the Provinces in Canada, there was unequivocal negative reaction. The automobile insurance policy is a standard form throughout Canada and perhaps they feared potential legal entanglements.

The whole issue of Plain English insurance contracts has prompted an enormous number of articles in American journals.

Now we move on to Canadian initiatives - by the Royal Insurance Company and the Insurance Bureau of Canada. We have several newspaper reports of

the new Royal policies; nothing in the professional literature. We found one article about the IBC; it was written by Dave Jackson of the IBC.

2.1.4 *Royal Insurance Canada*

Point twenty: Business does respond to consumer initiatives. Alan C. Horsford, President of Royal, proposed the new policies in 1975. Gordon Findley, head of Royal's Communications and Public Affairs Department, describes this as the mid-point in the consumer movement. Consumer advocacy was in vogue. Disgruntled customers, who discovered too late that their policies did not give them the coverage they thought they had, went public on consumer hot lines - on radio and in newspapers - to voice their complaints.

Royal engaged Siegel and Gale and began two years' work to 'put the jigsaw together'. Many layers of management, legal counsel, and Findlay's department were involved. They wanted the policy to be 'as simple to read as a newspaper or the *Reader's Digest*'.

This policy is an 8-1/2 by 11 booklet bound in high-quality card stock. On the cover it says "We want you to know what your coverage is. So, we've written this policy in simple, easy-to-understand language." There's a Contents list and bold-face headings such as 'Who's covered' and 'Claims we won't cover'.

Terms and conditions are explained with short anecdotes or scenarios. One of the protections of the policy applies to destroyed buildings. The writer

tells us 'If you elect not to rebuild we'll pay you the actual cash value of the building up to the limits of your coverage.' The writer defines cash value as 'the cost of replacing the property minus any depreciation'. Then we listen to a story: 'Your home on Green Street in Vancouver is destroyed by fire. You decide not to rebuild. We determine that it will cost $35,000 to rebuild on that lot., but since the house hasn't been maintained in the last 15 years. its actual cash value (replacement cost minus depreciation) is $25,000.'

Point twenty-one: Stories help us to understand. Royal printed its stories in red type so that the knowledgeable reader could skip them.

Before the policy was printed it was sent to Helen Henderson, financial specialist with the Canadian Consumers' Association, twelve 'ordinary' individuals outside the insurance business, a judge, other lawyers. All endorsed the policy.

This version of Royal's Homeshield Policy is a pleasure to feel, look at and consult. It was launched in 1977 and received wide press coverage. It was cited admiringly during the debate on Ontario's Plain Language Bill (see Section 22.1).

Sometime in the eighties Royal issued another version of its Homeshields Policy.

It is a 3 -1/2 by 8-1/2 pamphlet with a red cover. The policy is printed in black 6-pt type on thin paper. The contents page and the bold headings remain. The stories are gone. Royal is using the Plain English text devised by the Insurance Bureau of Canada.

Royal was re-writing its policies at the same time as the Bank of Nova Scotia. Their head offices are only a few blocks apart. No one remembers any consultations.

Point twenty-two: Writers using Plain Legal English style often don't have any contact with each other.

A Standard Storeshield Insurance Policy was one of Royal's original group of Plain Legal English contracts. In March 1980 there was a fire in a store owned by Meyers who held a Royal Storeshield policy. Meyers brought suit against Royal, claiming double the payment which Royal had made. The case was heard in the Ontario High Court of Justice on 19 October 1984, Judge Fitzpatrick presiding.

In his judgment, Judge Fitzpatrick quoted from the policy: 'We want you to know about your coverage. So we have written this policy in simple, easy to understand language'. He held that 'the insurer, especially as it had stressed that the policy was written in simple language, was bound by any interpretation that the words could reasonably bear'. (49 OR (2d) 591). Judge Fitzpatrick noted that the word 'earnings' had been used in two different ways in one section of the policy, and in two different ways in one sub-section.

Point twenty-three: Writing Plain Legal English demands careful attention.

2.1.5 *Insurance Bureau of Canada*

Note: This section is based on a conversation with IBC Co-ordinator D.E. Jackson and his 1982 article "'Clear language" - the industry's drive for form 'readability'.

The IBC decision to revise their property and personal liability policies was influenced in part by the American insurance industry's earlier change to plain language policies. In 1976 IBC hired a consulting firm to look at the policies from 'a consumer's point of view and to measure the difficulties and misunderstandings which existed'. Their advice: Simplify the forms.

A committee of underwriters (insurance specialists) began preparing drafts in 1978 (Royal's policies were already in use). This group's primary responsibillity was the substance. To give sales staff an opportunity to make suggestions, drafts were sent to the Canadian Federation of Insurance Agents.

An in-house committee looked at the language. Members included IBC Public Relations Department staff (many with a background in journalism), lawyers and a secretary named Kathy who 'didn't know anything about insurance'. Jackson comments, 'We wrote for the guy on the Queen Street car [street car]'. We picture him as the colonial brother of the man on the Clapham omnibus.

The committee decided not to use the scenario device but to rely instead on the clarity of the language to state policy terms in a way that the consumer could understand. IBC chose the term 'clear language' rather than 'simple language' to emphasise that the forms would be more 'readable', not a simplicistic interpretation of what the traditional language meant.

IBC recognized the importance of 'visual presentation'. They hired a graphics consultant to recommend ways to make the text 'attractive and legible'. Those recommendations were included with the final package of 25 policy forms issued in 1982. Royal did not follow those recommendations; it copied the text.

It is ironic that the design elements which Royal refused were similar to the elements which made its first plain language policy so attractive: 12 point type; column width between 4" and 6"; 20% white space margin; colour to separate headings and relieve the monotony of black type on a white page.

The IBC change to plain language policies shows many of the patterns we have identified: the influence of others in the industry; an interest in the consumer; use of consultants; realization that the design as well as the text is important; providing an oportunity for staff - in this case the agents and brokers - to make suggestions.

2.2 *Administrative forms: forms, standard letters, explanatory leaflets and notices*

We don't have to borrow money, insure our house or rent a car. We do have to fill in income tax forms, apply for social benefits, understand zoning changes in our neighbourhood. These administrative forms traditionally have been written and designed in the same way as consumer contracts. But the consumer contracts have a justification: they are written to protect the business which produces them.

In theory administrative forms are designed to ensure that citizens can quickly and easily supply the information which government needs in order to provide, quickly and easily, the services and information to which the citizen is entitled. In reality, the text and design of administrative forms are seldom examined to see if they fulfil these functions. Bureaucrats are unwilling to ask the questions which the Rayner Review (Section 18.1) posed.

Here is a story that delights us. Alan Schwam is a life-time resident of the Kensington Market area in Toronto and a long-time fighter to keep the Market from being re-zoned. The fight started in 1968. He says "One day my wife and I got a notice from the city. It said 'You have been expropriated. Hire a lawyer'."

It would have been fun to find a copy of the real expropriation notice and figure out the percentage of the original which Schwam's seven words in two sentences represent. We expect that a re-zoning notice from the City of Toronto in 1986 is probably much different than the the 1968 version; we talk about that change in Section 18.3.

First we will set a wider context by describing the Rayner Review, part of a British central government plan. This section is based on *Administrative forms in government*, the report presented to the British Parliament in 1982. We use the *Good forms guide* (1983 and supplements) to illustrate how a large government department, the Department of Health and Social Security, went about improving its forms.

2.2.1 *Rayner Review*

The Rayner review of administrative forms was commissioned by the Government as part of its policy for good management and excellence in its own administration. The Government wanted 'to ensure that the citizen receives good service, that the public understand their rights and duties, and that the administration gives the best possible value for money'.

The Review defined an administrative form as 'a means by which the citizen or the firm on the one hand and the Government on the other talk to each other over an immensely wide range of business, part of a scheme of administration as various as collecting taxes or awarding grants'.

The Review 'aimed at identifying *burdens imposed* [our italics] by administrative forms and recommending how they should be reduced'. The review team (primarily civil servants drawn from the eight departments whose forms were reviewed) asked six questions:

1 **How many forms are there?**

Finding: It's a matter of best estimates. Departments could not find out how many or the usage rates. The team estimated that the Government issued 2,000 million, or 36 for every man, woman and child.

2 **How do the costs and benefits of forms compare**

Finding: Facts are in short supply. There are three types of costs:

production: designing, printing, storing and distributing. Estimate for one form 2.37 pence

cost in use: staff time to issue, check and follow-up. Estimate over four pounds

cost to the form filler: cannot be estimated in cash but can be estimated in terms of 'the exasperation and frustration that will follow on heels of an initial distaste and reluctance combined with an inability to understand'.

3 **Where do the forms come from?**

Finding: the law rarely specifies in detail. Individual branches decide that a form is needed, what its content should be and how it should be presented

4 **How do forms go wrong?**

Finding: Ministers and higher management do not know what's going on

There is little pilot testing

Some officials doubt whether it is right or necessary to communicate with the public in simple language

Direct and indirect costs are not considered

The language can be legalistic, lengthy and intimidating

Forms are hard to understand

Error rates of over 30%, either by staff or public, are common

5 **What should be done now?**

Finding: To have as few forms and as successful forms as possible

Recognize that a form is a part of a piece of administration and manage and control it in that context

Identify and control costs

Get policy and operational staff away from their desks to find out what

form-fillers make of the paper

Recognize that senior and line management must have determination, knowledge and imagination

The Permanent Secretary must check regularly that good forms policies are being implemented and maintained

Ensure that forms meet basic requirements of clarity, intelligibility and comprehensiveness

Establish and provide training for forms design teams

6 **Is that enough?**

Finding: An occasional ruthlessness will be salutary.

The example shown by the Ministers and top managers in getting the work going and sticking at it will be critical to the success of the policy

We have the questions and the findings of the Rayner team in detail because we believe that they are the necessary questions. It is likely that similar reviews in other government administrations would yield similar results.

The Department of Health and Social Security was one of the eight departments that participated in the Rayner review. Now we look at the DHSS initiatives to identify sound general principles for improving administrative forms.

2.2.2 *The DHSS* Good Forms Guide

Note: The content of *The good forms guide* reflects the fact that most DHSS administrative forms are application forms. However, the principles apply to every kind of administrative forms.

If a government department decides that its forms *must* be understood by the recipients, what are useful general principles on which to proceed? Here are the principles we have derived from the DHSS guide.

1 Find out who understands the existing forms

DHSS commissioned a study (the report is called *Forms into shape*) and discovered that its forms were: very complicated; often could not be understood by the public; in some cases could not be understood by DHSS staff.

2. Establish and properly fund an in-house team responsible for forms

DHSS set up the Forms Unit. In addition to DHSS administrative staff it hired four outside professionals: two specialist writers and two designers.

3 Decide on the role of the forms team

The Forms Unit is responisble for: writing and designing new major forms; reviewing and revising existing major forms; providing advice and training for other staff involved in forms work; testing forms on members of the public and staff.

4 Establish a procedure to resolve any major disagreements about decisions of the team

DHSS established such a procedure.

5 Encourage research. Get the research results to staff.

The Forms Unit commissions research. Two examples: Elaine Kempson's project on the language of forms; a review of the research on the effects of situation and context in using and understanding information, carried out by the Centre for Mass Communications research and Leicester University. Each Guide Supplement (published twice a year) reports on relevant research.

6 Know what is being accomplished, what needs to be done

The Forms Unit provides a detailed annual report to the Permanent Secretary.

We believe that these six principles can be applied in any department regardless of its size and the number of forms it produces.

We have been discussing administrative forms in national government. Now we look at the work being done by a large city, particularly with public notices.

2.2.3 *Notices*

I often notice the public notices in newspapers. They usually look as though no one is supposed to read them: the name of the official and the department in large type, the text in small black slabs; legal words and phrases; blurry maps. Although all levels of government use such notices to tell citizens about rights, responsibilities and changes in the law we found no mention of them in our literature search.

I had the good fortune to have a long conversation with Doug Neale who, as head of the City of Toronto Communications Services, is responsible for Notices. He said that his biggest stumbling block has been to convince the legal department that Notices are advertisements, not legal documents. He sees progress. He feels that the 'City' is aware of the need to simplify, that 'if you want someone to read something, the person must be able to understand it'. Neale was good enough to send me a selection of 'before and after' City Notices to show what they have been able to do.

The Swimming Pool notices (Appendix 2) are a good example of the changes that can be made. In the 'after' version the largest type names the audience - swimming pool owners. In the 'before' version, the largest type names what the document is - a notice. The new version does not set words in all caps, an old practice that makes it difficult to 'see' the words. The new style prefers the everyday to the far-fetched and formal: 'It's up to all swimming

pool owners' rather than 'It is incumbent on all owners of outdoor swimming pools'. The new writer does not lengthen the text with detail. Instead of 'To be familiar with the requirements of this By-law and to ensure that the pool is at all times protected with a fence which is constructed and maintained to the requirements of the By-law. Particular emphasis should be placed on providing and maintaining closers, latches and locking devices on gates and doors leading to the swimming pool area' the new version says 'to erect fences around pool that comply with City By-laws and to maintain fences according to municipal standards'.

The new notice begins by telling us the reason for the By-law in a catchy, narrative way: 'You can stop a tragedy before it happens . . . Every summer lives are lost in drowning accidents in backyard swimming pools'. One has to read almost to the end of the first papragraph of fine print in the old version to find 'in order to eliminate drowning hazards which are associated with such pools'.

Unlike the DHSS Forms Unit Neale's group has no official power. It is an in-house advertising and public relation agency which City departments can choose to use. There are six writers on staff, all with a background in journalism and public relations. House style is based on using language creatively in order to communicate, to 'write as we speak but not to blatantly break the rules'.

My conversation with Neale took place a few weeks before a municipal election. There had been a significant change in the Municipal Elections Act. Neale and his staff were composing a letter, to be sent to every voter, to explain the change. They were already on their tenth draft.

Many smaller municipalities would like to follow the Toronto example but do not have professional writing staff. Some exchange takes place through the Institute of Public Administrators of Canada, and the Association of Municipal Clerks (a large percentage of notices originate in the municipal clerks' offices).

Don Newman, Commissioner of Planning for the City of North York, began our telephone conversation by saying 'I am heartily in accord that notices should state things clearly'. I had phoned Newman because of a newspaper report quoting a North York Councillor as saying 'Our city employees can write plain English'.

The Councillor was responding to a consultant's report recommending that the City write its notices in plain English. The recommendation was part of a management study for the Planning Department; one of its sections dealt with 'How to improve communications'.

As I re-read my notes I realized that during our conversation Newman had expressed in his own words many of the categories of comments we were beginning to discover.

A purpose: We want citizens to understand

We *are* concerned. The preparation of document and reports in simple language is what we're aiming at.

Other staff members may be involved

Hearing notices as they now exist must be looked at by the City Clerk and the City Solicitor.

Other legislation may be involved

We must comply with the provincial statutes [Ontario Planning Act 1983].

Will the new form be binding?

A paraphrase may lead to problems. The public hearing could become null and void.

Better safe

We're inclined to quote the Act, to use their words, their sample hearing notices.

Familiarity breeds familiarity

The people who deal with the documents read them every day.

Technical words

Very cumbersome if you have to explain every bit of terminology. How do you explain 'ratio'?

Who are the readers?

What level do you aim at?

Questioning assumptions

Are there levels?

On writing plain language

It looks very simple to write plain language. But it's very difficult.

2.3 *Statutes, Regulations, By-laws*

First some statements about who can be expected to read the law.

Lord Diplock:
For legislation to be sure in its effect it must be drafted in terms which those affected by it can understand and respect; this is especially true in the social field.

F.A.R Bennion, Chairman, Statute Law Society, and Parliamentary Draftsman:
No legal system can afford to allow its citizens the easy escape of pleading ignorance of the law. Yet if the state insists on treating people as if they knew its laws it has a duty to render that knowledge accessible to them. Our modern state does not fulfil that duty.

Both of these lawyers express their belief that we should be able to understand our laws. This proposition generates arguments such as: the substance is too complex; ordinary individuals would not read them anyway. In any discussion of statutes we must also consider those unordinary mortals who, we have assumed, must understand the law. We include in this list Members of Parliament, ministers of departments, civil and public servants, judges, and yes - lawyers.

A Lord Chancellor in the House of Lords (quoted by Sir William Dale): I would be the last person to say that I understand this bill. Or for others. Here are a few quotes from recent newspaper articles:

An Attorney-General

Globe and Mail 14 Oct 1985 Ontario Attorney-General Ian Scott commenting on the Young Offenders Act, stresed that there is considerable difficulty in implementing the act in Ontario. One problem, he said, rests with the act's language which 'needs a lot of fine-tuning'.

A public servant

Globe and Mail 17 Oct 1985 In an article on Bill 77 (a new child welfare act) John Cuff says 'Bill 77's regulations for children's mental health centres are considered confusing and inadequate by many professionals'. The inadequacy of the regulations is the responsibility of the inititating department; the confusion is the responsibility of the writers.

Civil servants

Globe and Mail 25 Nov 1985 Two years after implementation of the Access to Information Act, the federal bureaucracy still can't get it right. Only two out of a dozen major federal Government departments were able to give complete answers to hand-delivered requests . . . for basic information and documents . . . The survey of 12 departments uncovered inconsistencies in the way requests for information are processed, *in interpreting the law* (our italics), in the level of service to the public, and in costs to taxpayers.

A Judge

Globe and Mail 31 Dec 1985 The Ontario court of Appeal has reduced the sentence of a Manitoulin Island youth . . . "It is apparent that the section

would benefit from a clear statement of intent," Associate Chief Justice B. J. MacKinnon said in a written judgment. "Where a sentence leaves a reasonable doubt of its meaning . . . the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself.

Canadian Members of Parliament

Canadian MP's hear the Minister's speech when it is presented for second reading and have before them a special copy of the bill with explanations and comments opposite each page. The Minister has a Black Book explaining each section of the bill. Friedland (1975) comments 'But once the bill is passed and becomes an Act of Parliament, all these explanations and comments are lost. They do not accompany the Act into the statute book. It is interesting that what is necessary for members of Parliament is not thought to be necessary for the private citizen'.

Writing styles change. Anyone who is making a critical examination must look at recent laws. It is not reasonable to judge from one instance; the investigator must look at a sample group of laws from the same time period. The investigator should look at earlier laws in the same jurisdiction to observe change in progress, and compare laws of a similar nature from other jurisdictions. And keep in mind Lord Denning's observation: "Perhaps drafters have set themselves an impossible task. It is not possible to foresee every eventuality, or if foreseen, to describe it in exact terms".

Sir William Dale provides a checklist of symptoms which signal obscurity: long involved sentences and sections; much detail, little principle; an indirect approach to the subject matter; subtraction - as in "Subject to . . .", "Provided that . . ."; centrifugence - a flight from the centre to definition and

interpretation clauses; poor arrangement; schedules - too many and too long; cross-references to other Acts - saving space, but increasing the vexation.

Any commentary on the writing of Canadian statutes must include Elmer Driedger, the lawyer who changed the shape of laws in Canada and abroad. He served as Deputy Minister of Justice and as Chief Legislative Counsel for Canada. Until his death in the fall of 1985 he maintained an office at the Department of Justice. He designed the only Canadian programme in legislative drafting (at the University of Ottawa) and taught there for many years. His books are standard reference works.

Chief Legislative Counsels and their staffs are intent on preventing obscurity. Conversations with Gerard Bertrand, Chief Legislative Counsel for Canada, Jacques Desjardins and Ginette Williams, Senior Counsel, Privy Counsel Office, and Arthur Stone, Chief Legislative Counsel for Ontario, discussed their own writing process, and the qualifications and apprenticeship of their staffs.

Ginette Williams on writing process, 'Writing simply comes with experience, but it is *always* difficult. I've spent a whole day trying to say something I *know* is simple.'

Gerard Bertrand speaks of some of the special qualifications of his staff. 'They must appreciate language, love to write. They must like the law and have an insight into the whole government process. Most read a lot.' Editors in his department review the text for clarity. They are specialists; they ensure consistency. Their backgrounds are in journalism, belles lettres, education.

When Arthur Stone talks about his own writing he is talking about Murray's rehearsing and drafting stages. He says. 'The main exercise is analyzing the subject matter, to know what you want to say. you must not put anything down unless you understand it'. He feels that Driedger was too concerned with syntax'. Translated to Murray's terms, that Driedger began with the revising stage. (Elmer Driedger died in the fall of 1985 but his influence is very much alive).

Stone's view of what is important in writing is reflected in how he chooses new staff. He gives applicants his own 'aptitude test', to try to get at their analytical perception. Ginette Williams, when I asked her how she trained new staff, said 'I try to get them to discover the problems'.

We make one venture outside common law. Quebec is a civil law jurisdiction; its laws are composed in French and translated into English. The Department of Justice of the Province of Quebec has published a guide to legislative drafting, *Guide de redaction legislative*. It was written by two lawyers and a linguist. The Quebec guide has a chapter on 'le langage legislatif'. It deals with : simplicite et concision, clarte et precision, formes du verbe, ordre des mots.

We now turn to three jurisdictions that specifically require that laws be written in plain language. They are the State of Victoria, Australia; Montgomery County, Maryland, USA; City of Toronto, Ontario, Canada.

Note: By the time we discovered the existence of a British document *The preparation of legislation* (also known as the Renton Report) it was too late for us to locate a copy. Lord Denning (1983) cites paragraph 10.13 as recommending that 'that statutes should expound principles in clear language.

2.3.1 *The State of Victoria*

'The changes mean that the legislation will be easier to understand, free of pomposity and verbiage, lean and hungry in approach and full of informed common sense.'

Attorney-General Kennan is describing the new format for legislation. The quote appears under a box headline KENNANIZATION in the July 1985 issue of the *Law Institute Journal*; it accompanies an article by Robert Eagleson on the new rules.

Most surprising of Kennan's statements is: 'Parliamentary Counsel will now have regard to the Flesch Reading Ease Index . . . the general thrust of Flesch, to use shorter words and shorter sentences, will be followed'. Chief Parliamentary Counsel is preparing training courses for all counsel in the skills of Plain English drafting.

We received a letter in late December from Stephen Mason on behalf of the Australian Law Reform Commission. He suggested that we look at the Coroner's Act 1985 (Vic) as an example of the new style. And then comments "It is fair to say that it has not been greeted in the profession with universal acclaim".

Exciting times in the State of Victoria.

2.3.2 *Montgomery County Maryland*

We have no background on the *Montgomery County (Maryland) plain language drafting manual*. It is itself a model of Plain English and good design.

It describes in detail how bills, ordinances, resolutions and regulations are to be drafted. In the chapter on plain language the writers give seven rules, explain each and provide detailed before and after examples. Their rules are: Simplify sentences. Use the positive. Use logical order. Use the active rather than the passive voice. Avoid using nouns instead of verbs, adverbs, or adjectives. Avoid ambiguity. Use plain and necessary words.

These are the rules we all have come to know and love. The important point is that a county government has decided to ensure documents that its empoyees and citizens *can* read.

2.3.3 *City of Toronto*

By-laws are close to ordinary citizens' ordinary and important concerns. The Toronto Zoning By-law No. 20623 was passed on 13 April 1959. By 28 June 1985 it was barnacled with about 2200 amendments. It was described as 'so baffling that homeowners are forced to run up legal bills to find out what they can't do'. In 1982 the Mayor appointed a Zoning By-law Task Force. Its terms of reference included 'the simplification and clarification of the langauge'.

The Report (presented in 1984) identifies some Dale symptoms:

> Many of the problems associated with the [existing] By-law stem from its use of lengthy sentences, paragraphs and legal jargon. In several instances the intent is obscured in excessive explanatory verbiage, making it difficult to determine the requirements of the provisions.

The Report presented three basic goals for By-law reform: information should be easy to locate, provisions should be easy to understand, current planning objectives should be reflected in the provisions. Although the Task Force was working on a specific By-law we think it likely that the points it makes about clarity may be applied when other City By-laws are written or revised.

Here is Principle 3:

Provisions should be written and ordered in a clear way.

i The By-law text should be written in plain language

ii Headings should be added to aid in locating provisions

iii Charts and tables should be used where possible

iv The numbering sytem should be consistent and based on that used in provincial statutes

v Legal descriptions of areas should be replaced with maps or confirmed municipal addresses

Alderman Gee says of the new By-law:

It allows the average homeowner to sit down and quickly determine what they can or can not do with their house without having to hire a battery of experts to give them advice.

Planners say that the new law would allow a homeowner to get a building permit in about 20 minutes (compared with the former six to eight weeks) because the homeower will understand the rules.

2.4 *Judges' writing*

One of the delights of this work has been the opportunity to read the Plain English of Lord Denning, Master of the Rolls (President of the Civil Division of the Britsh Court of Appeal) 1962-1982. In *The closing chapter* he sums up his writing principles:

Use plain, simple words and sentences which all your hearers and readers will understand

Avoid the roundabout expression [Dickens would have said 'circumlocution']; use the direct thrust

When writing a book or an essay or an opinion break up your pages into paragraphs and your paragraphs into sentences. A long unbroken paragraph is indigestible.

Never stop at your first draft. Always go through it. See how it reads. Not only to see whether it is accurate but, what is more important, to see if it is clear to the reader

Lord Denning then describes his innovation in the printing of judgments in the Law Reports:

> At one time the judges used to deliver long judgments covering many pages without a break. I was, I think, the first to introduce a new system. I divided each judgment into separate parts: first the facts; second the law. I divided each of those parts into separate headings. I gave each heading a separate title. By so doing, the reader was able to go at once to the heading in which he was interested: and then to the passage material to him.

Lord Denning has a reputation for writing *only* in short sentences. Here is an example from *The discipline of law*:

A load of whiskey was being carried in a trailer from Glasgow all the way across Europe to Teheran. It was stolen in England. The exporters had to pay 30,000 pounds excise duty on it.

But Lord Denning's rule is not 'Write in short sentences'. It is, rather, the Strunkian principle: 'Put statements in positive form' and 'Omit needless words'. Here is a longer sentence from the judgment Denning wrote in the case of *Court Estates Ltd v Asher*:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity.

None of the guidelines and rules we have encountered talk to us about the power of metaphor to make us see a complex idea. Lord Denning is a master. He develops the argument in the same case:

A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must seek to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.

And then he continues

Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

Richard Dick (1985) provides a fine selection of opening sentences from some of Lord Denning's judgments. Here is one:

Frederick Leslie Watkins was fatally injured in a road accident on December 4, 1959. He was driving a car. He himself was killed.

How do judges learn to write judgments that are clear to the citizens involved and to the lawyers and judges seeking precedents?

American and Canadian judges have the opportunity to attend Writing Institutes planned specifically for them. I learned about the Canadian Institutes during a conversation with Chief Justice Griffiths of the Ontario Supreme Court.

They began in 1980. Judge Griffiths initiated the idea; it is sponsored by the Candian Institute for the Administration of Justice.

The Institutes are planned 'to help judges write clear, lucid judgments which the lay person as well as the professional can understand'. Faculty members are professors of English or Journalism who are also writers. There are two or three general lectures on writing (none on law) Harold Kolb (author of *A writer's guide*) was the keynote speaker in 1984. His rules are Strunk's rules. Indeed the *Elements of style* is given to every writer.

But Judge Griffiths is certain that 'the great work is done in the small seminars'. They take place across the three days. Two or three judges and a faculty member analyze and discuss each other's writing. The judges have previously sent in samples of their judgements to be photocopied. As well, on the first day the tutor presents a hypothetical set of facts and each judge writes a four to five page judgment. Their own writing contributes to the common pool of work.

Judges can submit to their tutor the judgments they write during the next few months. Judge Griffiths observes that judgments become shorter and more precise; hackneyed phrases have disappeared. He says that the excellence of the teaching staff is the strength of the course.

There is a French section of the Writing Institute which meets concurrently. We do not have any details.

Judges are frequently asked to head commissions of inquiry and report the findings. Mr. Justice Charles Dubin of the Ontario court of Appeal headed a federal inquiry into aviation safety. A *Globe and Mail* editorial (27 Oct 1984) titled 'Simply put' compliments the Judge on his reports which 'took pains to help us all understand a difficult subject'.

In a *Globe* interview (same date) headlined 'Drop legal jargon, Dubin urges' Dubin says that mechanical and scientific matters aren't easy for him. He goes on 'If I had let the aeronautical engineers use their jargon on me, I wouldn't have understood what they were talking about'. He wrote his report in layman's terms and urges judges to do this even when they are dealing with complicated matters. He ends 'I think inadvertently we

sometimes overlook the fact that the law is not just the concern of judges and lawyers. It's the concern of everybody'.

The Plain Legal Language initiatives taken by Canadian judges are outstanding. We found no mention of the Institutes in the professional literature. Our information about the Canadian seminars came from a conversation with Chief Justice Griffiths, the record of Judge Dubin's work from a daily newspaper.

2.5 *Legal writing in private practice*

In an earlier version of this work we titled this section 'Bespoke Contracts' to suggest the custom tailoring of private legal documents as opposed to the mass production of consumer contracts and administrative forms. In reality, many lawyers in private practice stitch together parts copied from in-house patterns to make a will or trust. These patterns are called precedents.

We do not argue that lawyers should not use precedents [Writer's note: can't solve the problem of double negative]. We do argue that lawyers should examine the history of their patterns and apply Mellinkoff's questions (Section 11). The Toronto law firm of Rogers, Smith, Dick and Thomson, is involved continually in this process, presumably because of the influence of one of the partners.

Robert Dick is a Canadian pioneer in the Plain Legal English movement. (You have read about his work as drafting counsel for the Bank of Nova Scotia in Section 17.2). Dick worked in the office of the Ontario Legislative Counsel before he entered law school. He was shocked at the difference between the clarity of the statutes and the obscurity of the legal contracts he was studying. When he began articling he couldn't follow the concepts in the documents.

Dick began to apply the principles of clear writing when he went into practice and in 1972 published the first edition of *Legal drafting*. He was confident about his ideas but not very confident about the book. He sent a review copy to Lord Denning, who replied, "I can see that you have done a first-rate piece of work ... I don't know of any book that has dealt with the matter so well'.

In 1985 Carswell published the second edtion. In the Preface Dick looks back:

> After [the first edition] I received ... requests from various bar associations and universities ... I became a travelling road show ... at the same time I became active in producing and particpating in drafting programs for the Law Socieety of Upper Canada and the Canadian Bar Association ... Despite all this, most law schools and many lawyers still ignore the disciplines of legal drafting. It seems that the executives of insurance companies and banks are the ones most interested in the discipline.

Dick has a clear sense of his writing process: 'It begins with a subconscious reaction to the client's problem. At some point we start formulating inwardly what we are going to write. The actual draft evolves from this mental draft.' It is not surprising to find Vygotsky's *Thought and language* on Dick's list of sources.

Although he compares traditional common law style with *two* modern styles, (Modern North American and Plain English), the rules he presents match the principles of general Plain English.

Mary Lou Benotto, a barrister with the Toronto firm of Chappell, Bushell & Stewart, also advocates plain writing. She says, 'Law should be accessible and understandable to the people. Clients are not fools who should be kept

in the dark. They should be able to pick up a statement of claim or a separation agreement and understand it.'

Writing has always appealed to Benotto; she did her undergraduate work in English. She says, 'I was appalled at some of my fellow students in law school, at how terribly they wrote. They could not compose a concise letter.' Benotto chose to article at her present firm because she knew of their emphasis on clear writing.

She works with a senior partner to train new staff to reduce the amount of words. ('In the event of' becomes 'if'). Any document going to the public is checked by a senior lawyer who ticks off unnecessary words. They collect bad examples (from other firms).

On precedents: I tend to draft originally rather than rely on precedents. It forces me to direct my mind to what I'm thinking.

On formal language: Our firm tends to think that any formal language is just a mark of insecurity. If you can't say something simply you haven't done your job.

My interview with Robert Dick was suggested by Brian Lande, Head of the Ontario Legislative Library, when I consulted him about the project. I arranged a meeting with Mary Lou Benotto because I was trying to track down a legal workshop for journalists planned by the Canadian Bar Association. Once more we had to depend on chance to find individuals involved with plain language and the law.

Some law firms set up in-house writing programmes to teach Plain Legal English. Joel Henning (1983) gives detailed guidelines for such programmes. (We learned from Robert Eagleson that Henning is a writing consultant). One

of Henning's points: 'Good writing programs use the actual work product of participants'.

With this section we finish our description of Plain Legal English at work. In Part C we describe some of the catalysts and players who encourage and promote Plain English. Section 22 is about one of the most controversial catalysts, plain language laws.

3

CATALYSTS AND PLAYERS

3.1 *Plain Language Laws*

David Mellinkoff, in *Legal writing: sense & nonsense*, gives a clear and reasoned account of plain language laws. Criticism of the language of contracts is not new; Mellinkoff demonstrates with a long quote from a judgment written by 'the splendid Mr. Justice Doe' of New Hampshire in 1873.

> The study of them [policy provisions] was rendered particularly unattractive by a profuse intermixture of discourses on subjects in which a premium payer would have no interest. The compound, if read by him, would, unless he were an extraordinary man, be an inexplicable riddle, a mere flood of darkness and confusion. Some of the most material stipulations were concealed in a mass of rubbish, on the back side of the policy and the following page, where few would expect to find anything more than a dull appendix, and where scarcely anyone would think of looking for information so important as that the company claimed a special exemption from the operation of the general law of the land ... As if it feared that, notwithstanding these discouraging circumstances, some extremely eccentric person might attempt to examine and understand the meaning of the involved and intricate net in which he was to be entangled, it was printed in such small type, and in lines so long and crowded, that the perusal of it was made physically difficult, painful, and injurious. Seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the supression of it. ... As a contrivance for keeping out of sight the dangers created by the agents of the nominal corporation, the system displayed a degree of cultivated ingenuity, which, if it had been exercised in any useful calling, would have merited the strongest commendation.

Keep in mind that plain language laws do not deal with the substance of a contract. They are designed to make business place its conditions in sight. The consumer does not receive any benefit of negotiation, only of knowledge.

Each plain language law is set in motion by specific events. But the whole plain language movement has been encouraged by the general climate of the seventies and eighties. Mellinkoff says

> Volumes will be written on the reasons for change. Most immediate is the political pressure of a seething, spreading, nudging "consumer movement". Its own house of words not in order, government responds to consumer nudging by nudging business Government nudging, consumer nudging, and a clear, dawning light of competitive self-interest have all stimulated private efforts to improve the "image" of business. In the background is a growing popular interest in language, especially in the language of the law.

We have looked at voluntary private efforts in Section 17. We will present some evidence of popular interest in Section B 13, Popular Press. Now we look at government nudging.

First a statement of the obvious: private enterprise prefers to operate without government regulation. Presented with evidence that a change will increase the public well-being and safety (car seat belts, wheel chair access to public buildings are examples), private enterprise responds by saying that it will bring in the change voluntarily; that government 'interference' will at best slow the process, at worst guarantee failure after the wastage of a lot of money.

Only the details of the arguments change. Against plain language laws there are three basics: the courts will be swamped in litigation as to whether a contract meets the specifications of the law; a contract will no longer be

binding; we can't afford it. The New York State law has been in force now for eight years, five others for shorter periods. What has happened?

There has not been a significant number of court cases. We did a quick Lexis search and retrieved eight that cited the New York law. In one a tenant argued successfully that his lease renewal should be in Plain English. In another the court found that a lease was not in Plain English.

What methods did New York businesses use to convert their contracts to plain language? Do New York consumers read their sensible and useable contracts? How sensible and useable are the new contracts? These are questions which have not been asked. Once the plain language law was in effect the only published interest was in the fate of plain language contracts in court. We found no detailed searches. No research projects were reported that dealt with the contracts themselves. These are significant questions.

Do we need plain language laws? Robert Dick says, 'I am far from convinced, though, that we in Canada need any plain English legislation to force us into any mould'. David Mellinkoff, 'It would be better if legal writers mend their ways on their own; they can. But without the goad of some legislation, they won't'.

Many British legal writers have mended their ways under the goad of public pressure from the National Consumer Council, the Plain English Campaign and central government. Many British businesses do have plain English contracts. But the NCC has decided that there are still too many who haven't and don't intend to. NCC's decision to campaign for a plain language law supports Mellinkoff's prediction.

Now we look at four laws to show their origins and the variety of coverage, enforcement and specifications which they mandate.

The bills are:

New York State

Requirements for the use of plain language in consumer transactions (Section 5-702 of the General Obligations Law). Introduced in February 1977; passed later that year; amended in 1978; effective November 1978

Connecticut

An act concerning plain language in consumer contracts (Public Act No. 79-532, 1979). Passed July 1979; effective 30 June 1980.

Province of Ontario

An act to require that consumer contracts be readable and understandable. Bill 63, a private member's bill proposed by Remo Mancini. Introduced 1 June 1982; defeated at second reading 27 October 1983.

Great Britain

Plain language bill: a bill to secure improvements to the language and layout of certain contracts. Text of bill proposed by the National Consumer Council, presented in *Plain words for consumers: the language and layout of consumer contracts: the case for a plain language law*, by Richard Thomas. Published by the NCC in 1984. Not yet sponsored in Parliament.

3.1.1 *Origins*

The New York State law (sometimes referred to as the Sullivan law; it was sponsored by Assemblyman Peter Sullivan) was the first. All succeeding laws are influenced by it.

It seems likely that Sullivan was encouraged by the publicity surrounding the Citibank forms (see Section 17.1) and the expectations it aroused. There is a more direct connection. The law was the brain child of Duncan A. MacDonald a lawyer with Citibank. There is irony here. At first Citicorp vigourously opposed the Sullivan law; it mellowed its position later. A consumer organization, the New York Public Interest Group, lobbied for the law.

We have not tried to discover the details of the origins of the Connecticut law; we include it as an example of a law mandating detailed standards. It seems certain that part of the impetus was the passage of a plain language law by its neighbour, New York State.

The Ontario bill is the only Canadian attempt. Remo Mancini, a Liberal, introduced it as a private member's bill when he was a member of the opposition. The bill was not supported by the Government and was defeated.

We know nothing of the origins of the bill. We have a copy of the bill, the Hansard record of the debate and two press releases. The NCC included it in *Plain words for consumers*. Mr. Mancini's assistant remembers that there was a newspaper article but could not locate a copy. Nothing turned up in our InfoGlobe search.

We could not arrange an interview with Mr. Mancini. In the summer of 1985 his party formed the new government of Ontario. Mr. Mancini, as Parliamentary Secretary to the Premier, had to commit all his time to preparations for the first session of the Legislature. His brief official biography gives no clues. He was born in Italy in 1952, emigrated to Canada with his parents, attended Dalhousie Univesity, was elected to the Legislature in 1975, was re-elected in 1977, 1981, and 1985.

One of the speakers in the house debate on the bill suggested that Mr. Mancini had been influenced by newspaper reports of the Royal Insurance plain English contracts but we have no confirmation of this.

The National Consumer Council (See Section 23.1) is one of the original players in the Plain Language Movement and one of its most knowledgeable, persistent and successful. Its decision to write and lobby for a plain language law is significant in the light of the progress made in Britain by voluntary initiatives to use Plain Legal English. Decisions about the substance were based on the evidence of several years enforcement of a number of plain language laws.

We have not located any professional discussion of the NCC bill, nor do we know if they are close to finding a sponsor for it in Parliament.

3.1.2 *Kinds of contracts covered*

A plain language law is enacted to ensure that standard consumer contracts are written in Plain Legal English. The law must specify the kinds of contracts; it usually sets a dollar value limit (varies from $25,000 to $50,000). Transactions can include bank loans and other credit, the purchase or rental of personal and household goods, rental agreements and insurance.

Insurance companies have often lobbied successfully to have their policies covered by a separate law. The 1978 amendment removed insurance policies from the New York law. The Mancini and NCC bills specifically include insurance contracts.

In the New York bill a 'business' is 'any creditor, seller, or lessor'. In Ontario it is 'a person who is not a consumer'. The NCC bill 'includes a professional practice, any other undertaking carried out for gain or reward, and the acitivities of any government department or local or public authority'.

This is a major extension of coverage. It recognizes that government is a business and that it does make standard contracts with consumers. For example in Britain local authorities are major landlords. The NCC bill requires that all those rental agreements come under the law. Our contract for this project is a standard government contract.

3.1.3 *Penalties*

This section of a plain language law must deal with two questions: What will happen if a plain language contract is contested on the grounds that it does not meet the standards for Plain English set out in the law?. What will happen to businesses that make no attempt to comply with the law? All the laws encourage compliance and impose penalties only after persistent disregard.

Under the New York law, if a business has attempted in good faith to comply, no action may be taken. If a business has made no attempt to comply, it is liable for actual damages sustained plus a penalty of fifty dollars. In a class action the maximum amount is ten thousand dollars. No action may be brought after both parties have performed the contract obligations.

Under the Mancini bill a consumer may rescind (cancel) the contract if it contravenes the bill, and collect damages. If cancellation is not possible the consumer may collect damages. In both cases the court may award exemplary or punitive damages.

Under the NCC bill, if compliance is attempted in good faith the court may award damages equalling the estimated loss. If there has been no attempt the court will levy an additional 50 pounds.

It seems clear that the amount of damages is so small that it will not attract frivolous suits and will not burden the business involved. Only the Mancini bill allows non-compliance as grounds for cancelling.

3.1.4 *Standards*

A standards section describes some or all of the following points: word choice, sentence length, coherence, design, clarity and the imagined reader. It is this section that shows the most difference. Should a bill offer general guidelines or demand specific features? The overwhelming opinion is for general guidelines, represented here by New York, Mancini and the NCC. As we have said, Connecticut opted for specific measureable features.

The overall requirement is coherence and logic. New York and Connecticut express this as 'coherent manner'; Mancini and the NCC 'coherent language'. Mancini seeks 'logical sequence' and the NCC 'logical order'.

Word choice

The New York bill originally specified 'common and everyday meanings'.
The 1978 amendment allowed 'any word, phrase or form required by state or federal law'.
Connecticut allows only 'everyday words' and specifies that the average word length not exceed 1.55 syllables.
Mancini adds to the New York description 'legal or technical words consistent with generally understood meaning'. It forbids double negatives.
NCC allows 'words or phrases of a technical nature which are required for precise specification'.
Connecticut is the only bill to deal with the form of words. It mandates

simple active verb forms; the use of personal pronouns or shortened names for both parties.

The bills using a general guidelines approach are following Mellinkoff's injunction to have a reason to use other than ordinary words.

Sentence length

Connecticut mandates an average length of 22 words, with a maximum of 50 words. Paragraph length must average 75 words, with a maximum of 150.

The Mancini bill says that sentences should be 'not unnecessarily long or complex' and forbids unnecessary cross-references and an exception to an exception.

Design

New York does not mention design.

Connecticut, not surprisingly has the longest list of specifications:
type of readable size, minimum 8 pt; captions in bold face type or type which stands out significantly, 10 pt. minimum; layout and spacing to separate paragraphs and sections from each other and from the border of the paper; 3/16" blank space between each paragraph and section; 1/2" blank on all borders; maximum line length 65 characters; ink which contrasts with the paper.

Mancini is satisfied with a laconic 'minimum 10 pt. type.'

The NCC bill requires that the contract 'be clearly laid out; use lettering that is easily legible; lettering of a colour which is readily distinguishable from the colour of the paper'.

All advise some form of suitable division and the provision of headings.

Mancini requires a table of contents for contracts exceeding 3,000 words or 3 pages.

3.1.5 *A brief profile of the literature*

Most of the articles have been published in professional law journals. In the United States the proposal of a new plain language law brings a flurry of articles in the state law journals about the necessity and the provisions; reviews of the experience in other states; scantier attention once the law is passed. NCC (1984) and Mellinkoff (1982) provide the most complete reviews of the legislation and the arguments.

The only survey by a Canadian is Fingerhut's 'The plain English movement in Canada' (1981). There is nothing in the 1985 *Canadian Encyclopedia*. As we said, we found no mention of Mancini's bill.

We have no information on the real progress of the NCC bill. The only professional journal article we found was in the *Conveyancer*; it described the substance of the bill but did not take a position on it.

Most of the articles listed in the bibliography cover the same ground. They repeat the original arguments and cite the same few early articles. We found no reports or analyses of court cases.

In a 1981 article, Black presents a theoretical model for a plain language law. It resembles the New York and NCC laws; Black advocates a generalist approach.

Occasionally there is a lively moment. Thomas ends the section 'The arguments against' in *Plain words* with this complaint from a business person,

'Consumers will easily comprehend some of the less attractive and onerous terms of the contracts they sign.'

Thomas responds. 'Precisely'.

3.2 *Elaine Kempson's Research Review*

Jen Scott sent us a typescript copy of Elaine Kempson's *Designing public documents: a review of research*, (1985). (Kempson includes administrative forms and leaflets in the term 'public documents'). It updates to 1984 the 1979 Central Office of Information review. Kempson's work will have great influence on the evaluation and testing of documents.

She divides the research into three categories: pre-design considerations, design stages, post-design stages.We begin with the post-design stage since it is the most controversial. The central question is: Should forms be tested in-use, or can we rely on nonuse studies? Here is Kempson's quote from Diana Firth (1980): Firth's conclusion is supported by many others whom Kempson cites.

The only way to find out in detail about a document (its impact, appeal, design and comprehensibility) is to study it in use and ascertain users' reactions to and comprehension of it. This does not need to be carried out on a grand scale with a wealth of quantitative data. The most meaningful approach is a qualititative/interpretive one, for example, depth interviews, group discussions and observations.

Here are Kempson's observations on readability formulas:

Much of this work relates to the validity and usefulness of readability formulae as a means of testing public documents. A number of authors have reviewed the research evidence and have generally reached the same conclusions.

* The statistical validity of most formulae for public leaflets is questionable. Most have been validated against educational texts. using schoolchildren.
* They are incapable of distinguishing between sense and non-sense texts.
* They do not measure a wide range of other factors that are know to affect comprehension. These include grammatical constructions, organisation of the text and graphics and typography.
* They cannot measure text against the knowledge and needs of an intended audience.

On Cloze tests (See Section 6): 'It is questionable whether they are valuable for evaluating public documents. They have been used for this purpose but were not found to be especially useful.'

Kempson, and the other researchers she reports, support in-use research and seriously question the results of mangled text devices such as readability formulas and Cloze procedures which are part of nonuse research.

We now look briefly at Kempson's two other stages: pre-design and design.

Pre-design considerations include:

1 proposals for an overall design process

2 the use of leaflets and forms

3 the ways people read public documents

1 A systems design diagram developed by Patricia Wright (1981) is complete and clear; other descriptions show little variation. The effectiveness of documents is jeopardized when parts of the process are ignored or forgotten. Research is needed not on the process but on neglect of the process.

2 Kempson reports some research on the use of leaflets displayed in agencies and enclosed in mailings. We have found no research and little

awareness of this important stage.

3 Research based on the assumption that the meaning is entirely within the text is no longer valid. Kempson reviews the research which shows that readers go beyond the text when they interpret it. Protocol analysis is a useful tool: readers think aloud into a tape recorder as they try to make sense of a document. Analyses of the transcripts show the strategies they use. The transcripts also identify points in the document where readers have trouble. Those points are examined to diagnose the causes.

The design stages are: guidelines, the language of forms, organising the content, typography, illustrations, typesetting.

All of these are covered in the research Kempson reports and the documents we have looked at. We have the same comment as for the design process: we have excellent guidelines. We need to promote their use.

Are in-use post-design form tests new? Sir Derek Rayner quotes the following story at the beginning of his review of administrative forms in the British government (See Section 18.1):

Lord Salter (in his *Memoirs of a civil servant*, Faber & Faber, 1969) recalls the intimacy with which top officials in the new welfare administration were involved in ensuring that it *made sense* [our italics] outside Whitehall. The steps taken to explain the National Health Insurance Act 1912 to the numerous Friendly Societies through which it would be administered included one rather 'ingenious device'. This was to choose an ordinary mortal as the editor of all circulars.

'It was his task to read them at the last stage before the actual issue, and to refer them back to the branch office which was resposible for the draft if there was anything not immediately intelligible to him. It was a severe, but salutary, test for the specialised official'

Sir Derek Rayner comments, 'Too few forms now in circulation seem to have been submitted to a similar test'. Recent reports from Britain show that many more forms are being tested with such ingenious devices.

3.3 Catalysts and players

3.3.1 Writing teachers

We have found a large number of articles and some text books offering advice to lawyers on how to write clearly. They follow the same pattern as the articles and texts in large numbers published for students in 'writing' courses. Most ignore the rehearsing and drafting stages. The advice assumes that the writers know what they want to say, in fact have written several drafts, and are now ready to do some shaping and adjusting for an 'audience'. Most of this is *editing* advice. The practice exercises give us practice in *editing*.

The advice does not go behind the rules. 'Use the active voice' (or 'The use of the active voice is the preferred mode'). Why should we avoid the passive? Because 'Prose that clouds responsibility also diminishes humanity'. Mitchell is telling us that 'a line runs from the meditations of the heart to the words of the mouth'. We have to change the way we think in order to change the way we write. Writing is thinking.

Most of the articles and books assume that the way to improve one's writing is to buy a book or read a series of 'how to' articles. When law schools assume that their students are already writers, what do they know of the writing courses the students have 'been exposed to' or the kinds of essays they have written?

James Moffatt, an American English teacher, divides school, college and university writing assignments into four categories:

1 Transcribing and copying

2 Paraphrasing, summarizing, plagiarizing

3 Crafting a conventional piece on given subject matter

4 Revising inner speech, authoring: the authentic expression of an individual's own ideas which the author has synthesized

Law school admissions officers need to discover whether applicants have grappled with the fourth category. Law school faculty members need to examine the writing tasks they assign.

When we assert that writing is a craft we cannot accept the 'how-to' method. We must take on the idea of craft studio, the craft studio of the Judges' Writing Institute, of the University of Windsor Law School writing course, of the Cornell Manuscript Club.

When E.B. White was Strunk's student at Princeton he belonged to the Manuscript Club; Strunk was a member. They met on Saturday nights.

Each member arrived bearing something he had written - a sketch, a poem - which was then deposited, unsigned, in a cardboard box. After a round of shandygaff and some light connversation, Professor Sampson would open the box and read the compositions, a ritual followed by a discussion period.

Do we need any more examples?

3.3.2 *Consumer Groups*

National Consumer Council, Great Britain

One of the most influential players in Britain . Because of its closely researched and well-written documents has had a great influence world wide.

NCC works closely with the Plain English Campaign to promote and publicize Plain English. NCC is lobbying now for a plain language law (see Section 22). They receive a lot of attention in the British Press.

Consumers' Association of Canada

At its 1981 annual meeting the Alberta Section passed a resolution that the CAC 'initiate the investigation and research into the possibility of "Plain English" being implemented in the preparation of legal documents'. The resolution was sent to provincial Ministers of Consumer Affairs and Attorneys-General. The president reports that 'not too much has happened' as a result'.

Consumers' Institute, New Zealand

Members have launched a 'Fight Gobbledegook' campaign. Details are reported in the Jan 1985 issue of *Consumer*.

3.3.3 *Design centres*

Document Design Center, Washington USA

Is part of the American Institute for Research. It identifies and sponsors research projects, publishes manuals, handbooks and a monthly newsletter *Simpy Stated* Directed a major research study on law school writing courses and teaching law school faculty to teach writing. Provides consulting service and maintains a large research collection.

Forms Information Centre, University of Reading England

A direct result of the Rayner Review (Section 18.1). Established in 1982 with funding for three years (we don't know if this support was renewed in November). It is connected with the University's Department of Typography and Graphic Communicaton.

Jen Scott, a graduate of that Department, established the centre. Her mandate is 'to collect all books, publications and information relating to form design, writing, testing and planning. The Centre has a large collection of sample forms and contracts. It publishes information series, bibliographies and research reports.

A good deal of Jen Scott's work is as consultant to government departments who are setting up Forms Units. .

This small centre has had an enormous influence in improving administrative forms and influencing the writing and design of legal documents.

An example of the influence one person with imagination, hard work and determination.

3.3.4 *Plain English Campaign*

How can we convey the force, energy, enthusiasm of this group. It was started by a fighter, Chrissie Maher. She didn't learn to read and write until she was seventeen. She founded a community newspaper and when she discovered that a lot of people couldn't read it she founded a plain English paper, the *Liverpool News*.

In 1976 Chrissie and Martin Cutts set up a Forms Market in a working class neighbourhood to offer advice about social security benefits. They discovered that the DHSS benefit application forms were terrible. Chrissie and Martin persuaded DHSS to let them redesign one form. They reduced the 8 pages to 4 (a 50% saving in paper cost). More importantly, there was an increase in the take-up of the benefit.

In 1979 Chrissie and Martin. formed the PEC. Every year they present the PEC awards for the best-designed forms of the year, and the worst. Everyone is asked to send in contenders and they do. The ceremonies are a big event and have included Lord Denning and stage and television stars as presenters.

PEC as well does solid work in re-designing forms, labels and instructions. They publish a newsletter, *Plain English*, and work closely with the NCC and government departments.

A Plain English Campaign has been formed in Auckland New Zealand 'to promote and train people in the use of plain language'. C. Cosgriff sent us this news in a December letter. We did not have time to investigate.

3.3.5 *Canadian Law Information Council*

Plain English is an important part of CLIC's Public Legal Education and Information (PLEI) work. CLIC maintains and publicizes a research collection; provides custom bibliographies via its computerized data base; plans and implements research projects; funds and reports research. Gail Dykstra, Director of the Legal Information Secretariat, has established a working network of people who are interested in plain language. CLIC is a Canadian combination of some of the functions of the Design Centres and the PEC.

3.3.6 *Law Reform Commissions*

We mention two initiatives by the Law Reform Commission of Canada as examples of what Commissions can accomplish:
Study on access to the law. Report published in 1975.
Project on the redesign of some federal government administrative forms under the direction of Mr. Justice Allen M. Linden (in progress)

A Bill to establish a full-time Law Commission is before the New Zealand Parliament. The Bill states that in making its recommendations the

Commission is required to 'have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable.'

3.3.7 *Clarity*

This is a new (1983) group of British solicitors interested in the simplification of legal English. Its founder is John Walton, the Bradford City Solicitor involved in the design of a plain English contract which won a PEC award. It presently has 300 members, some living outside of Britain. Achievements include three-day legal writing workshops and a newsletter Clarity.

Their aim is 'the use of good, clear English by the legal profession by avoiding archaic, obscure and over-elaborate language; exchanging ideas and precedents; exerting a responsible influence on the style of legal English, with the hope of achieving a change in fashion'.

3.3.8 *Law Societies and Bar Associations*

These organizations promote plain English through their journals and professional development courses.

The Michigan Bar Association is one of the most active. The November 1983 issue of their journal was devoted to Plain English. They have a permanent Plain English Committee and are supporting the passage of a Michigan plain language law.

The New Zealand Law Society has established a committee to promote clear drafting and use of plain English. It conducted a national seminar in 1983 and includes brief articles in its newsletter.

3.3.9 *English teachers*

We are all influenced by our school English teachers whether we are lawyers or not. We have discussed the work in writing and reading research, planned and conducted by English teachers, which is changing how we write and how we teach writing.

Robert Eagleson is an Australian English teacher who has had a direct influence on how legal documents are written. He has just finished a year of work as Special Adviser on Plain English to the Australian government. This

year he is working part-time as a Law Reform Commissioner for the State of Victoria (see Section 19.1).

In 'real' life he is a member of the University of Sydney English Department and has served as president of the Australian Association for the Teaching of English. He became involved with plain language and the law in 1976 when an insurance company consulted him about a plain English project. He has just sent us a copy of his report of a two-month visit to the United States and Great Britain to review progress in Plain English.

3.3.10 *Law Schools*

In general Canadian law school faculty expects that new students are already competent writers. Diane Reaume, First Year Co-ordinator, says that the Admissions Committee seldom looks at the essay question which is part of the LSAT qualifying exam. The first year legal research and writing course has about fifty students; it meets as a whole class.

It can be different. At the University of Windsor, Helga Kutz-Harder, Shakespearian scholar and teacher of first-year writing courses in the English Department, developed a writing course for law students. She gave a series of five lectures based on the common rhetoric errors she had discovered in a year of reading law students' work. She showed them how to recognize the same problems in their own writing and how to solve them. She also scheduled individual writing conferences. The teaching and learning were always based on the student's own work in progress. She read

the piece aloud and posed questions as a reader, 'What's keeping me from understanding this?' She identified the reader's problems with the writing. The writer worked with her to find the solutions.

At Auckland University law students are introduced to Plain English in a drafting course which is part of their final year.

3.3.11 *A sample of government initiatives*

The Australian government is including a chapter 'Plain English in official writing' in its new style manual (in press). It will be Chapter 1.

The U.S. Department of Commerce uses plain English in all its writing 'to save the public's time and money'. Secretary Malcolm Baldridge quotes William Strunk to his staff.

3.3.12 *The Plain English Exhibition*

The Exhibition opened in August in Whitehall; it was sponsored by the Cabinet Office and the Plain English Campaign. It showed how government departments have used plain English and clear layout to improve their forms; how medical labels and instructions on household goods can benefit from Plain English. Prime Minister Margaret Thatcher attended and urged citizens to complain about government forms that were hard to understand.

3.3.13 *Popular press, radio and television*

Newspapers print news releases about plain language. They often run a follow-up story by a columnist and frequently an editorial. The stories are picked up by wire services such as the Canadian Press.

We noticed this pattern - news release, think piece, editorial, wire service - when we examined our large collection of press clippings from the NCC. We saw it again in the Bank of Nova Scotia clipping file which Terri Foden sent us.

3.3.14 *Technical press*

British in-house and trade publications for the printing industry regularly carry features on forms design. The industry as a whole has worked closely with Jen Scott and the Forms Information Centre.

3.3.15 *Commercial form printers*

Their designers, by advice and example, influence forms design. Bill Harris Supervisor of Forms Design at Moore Business did important work with the BNS team (See Section 17.2). He has compiled a forms design guideline, a clear detailed list of questions to be asked during the forms design process. The first questions force analysis of the *need* for the form.

3.4 *Canadian Chronology*

1975

Boyer J P
Role of legislative counsel and the continuing quest to exorcise 'ambiguity, obscurity, and disharmony' from our statutes
University of Toronto Faculty of Law Review **33** 91-99

Bruce H
Jailbirds in a prison of jargon
Canadian Banker and ICB Review **82** 43-45

Friedland M L
Access to the law: a study conducted for the Law Reform Commission of Canada
Toronto: Carswell

1977

Goldenberg S
Plain English is catching on
Financial Times **10** 4-5

1978

Royal Insurance issues its first Plain English contracts

Donev S
Plain English set for a comeback
Toronto Star **18 Nov** 1+

Legalese out, English in as New York passes law
Financial Times of Canada **13 Nov** 24-25

1979

Bank of Nova Scotia issues first Plain English contracts

Driedger E A
The composition of legislation: legislative froms & precedents 2d ed
Ottawa: Department of Justice

1980

Dick R C
Plain English in legal drafting
Alberta Law Review **18** 509-514

Firby D
Two companies take fog out of their legal language
Windsor Star **7 Feb**

Manning A
An evaluation of the readability of publications regarding federal laws
Ottawa: Department of Justice

Roseman E
Plain English will eliminate confusion in legal documents
Globe and Mail **8 Jan** T1

Smith B
Legal jargon replaced on Scotia loan forms
Toronto Star **8 Jan** 5

Winter F
Legalese, bafflegab and plain language laws
Canadian Community Law Journal **4** 5-14

1981

Consumers' Asscociation of Canada (Alberta).
Annual Meeting Resolution that CAC (Alberta) inititiate investigation and research into the possiblity of 'Plain English' being implemented in the preparation of legal documents

Felsenfeld C
The plain English movement in Canada
Canadian Business Law Journal **6** 446-452

Felsenfeld C, Cohen D S, Fingerhut M
The plain English movement - panel discussion
Candian Business Law Journal **6** 408-452

Fisher J
A call to all communicators to join the plain English movement
Marketing **16 July** 21+

Ritter P A
Simplification of legal language and the Bank of Nova Scotia plain language mortgage form
University of Torotnto Faculty of Law Review **39** 170-179

1982

Insurance Bureau of Canada publishes Plain English insurance policies

Harper T
Drop legalese hereinafter, lawyers told
Toronto Star **2 Sept** A1

Jackson D E, Clarke B C
"Clear language" - the industry's drive for policy form readability
Canadian Insurance Agent and Broker **June** 14+

1983

A private member's bill in the Ontario legislature 'To require that consumer contracts be readable and understandable' does not pass second reading.

Brett G
Plain language mortgages cut legal lingo
Toronto Star **27 March**

Law and learning: report by the Consultative Group on Research and Education in Law
Ottawa: Social Sciences & Humanities Research Council

Toward a tax act that Canadians can understand
Financial Times of Canada **71** 13

1984

Federal Department of Justice provides 3.7 milion dollars to establish a Public Legal Education and Information (PLEI) Program within the Department. It includes a workshop and research program.

City of Toronto
Report of the Mayor's Task Force on the City of Toronto Zoning By-Law

Edwards S E
Drafting fiscal legislation
Canadian Tax Journal **32** 739-744

Freedman S
The law as literature
Saskatchewan Law Review **49** 319-327

Jakob K
The complete guide to policy writing
Toronto: Carswell

Tremblay R, Journeault-Turgeon R, Lagace J
Guide de redaction legislative
Quebec: Ministere de la Justice Direction general des affaires legislatives

1985

Canadian Department of Justice funds research project on Plain language and the law

Canada Department of the Secretary of State
The Canadian style: a guide to writing and editing
Hamilton: Dundurn Press

Canadian Bar Association Ontario Young Lawyers' Division
Legal research and writing: a seminar
Unpublished

Darville R
The trouble with legal language
Ottawa: Canadian Law Information Council

Darville R, Hiebert M
Small claims court materials: can they be read? can they be understood?
Ottawa: Canadian Law Information Council

Darville R, Reid G
Guidelines for writing, editing and designing
Ottawa: Canadian Law Information Council

Dick R C
Legal drafting 2nd ed
Toronto: Carswell

Dinsmore P, Dykstra G
Readbility and legal writing: a preliminary list of CLIC's legal information secretariat holdings
Ottawa: Canadian Law Information Council

Kess J F
Psycholinguistic principles applied to jury instructions: a bibliiography
Ottawa: Canadian Law Information Council

Kess J F, Moppe R A
Formulating Canadian jury instructions: an exercise in applied lingusitics
Victoria B C: Department of Linguistics University of Victoria
Unpublished

1986 in planning stage

Canadian Law & Society Annual Meeting: a symposium on Language and the Law

Law Society of Upper Canada: writing workshops on legal drafting and writing.

3.5 *Observations and Recommendations*

3.5.1 *Canadian Plain Language Centre*

Much valuable and interesting work is taking place in Canada which is not reported and not widely known. Individuals are working in isolation from others. CLIC provides exceptional access to networks and resources. That work needs to be expanded.

We recommend the establishment of a Canadian Centre with a mandate similar to that of the Document Design Centre, Washington and the Forms Information Centre, Reading (see Section 23.2)

The Centre's main functions would be to:
acquire, maintain, and actively promote a research collection across the necessary range of disciplines. CLIC has an excellent nucleus
provide a consultant service for outside writing and design projects
arrange workshops and seminars
identify and implement research projects
encourage and facilitate the writing and publication of reports of Canadian work

3.5.2 *Research into the processes of legal writing*

Legal writing is collaborative, seldom individual. Recent advances in developing theories of the writing process and of teaching methods have

come about through case study observational research of professional writers as they are writing, students as they are writing, teachers as they are teaching.

We recommend a series of research projects on the writing process of individuals and groups as they write legal documents.
We recommend a case study of judges pariticipating in a Writing Institute. Publication of the lectures given at the Institutes would be valuable.
We recommend case studies of the writing experience and writing processes of new law students and those students as they progress through law school and the bar examination courses.

3.5.3 *Administrative forms*

Forms reform has been very successful in Britain. We believe that similar initiatives would be worthwhile in Canada.

We recommend that projects should be initiated to:
plan an administrative forms review similar to the Rayner Review (Section 18.1)
encourage co-operation amongst those responsible for forms
ensure that the relevant research is made available
prepare a forms guide based on the DHSS model (Section 18.2)

3.5.4 *Plain English Campaign*

The British Plain English Campaign (see Section 23.3) gives ordinary citizens the opportunity to be involved. Its annual awards get a lot of press coverage

in an atmosphere of fun and goodwill. It takes Plain English out of the academic and scholarly worlds. The PEC has improved forms, contracts, guarantees and labels. It is now *normal* for citizens to expect Plain English legal documents.

We recommend the establishment of a Canadian Plain English Campaign.

3.5.5 *Standard consumer contracts*

We recommend projects to:

prepare a series of case studies of Canadian Plain English contracts (Sections 16.3 - 16.5)

trace the history of Canadian standard contracts

examine standard government contracts

3.5.6 *Form books*

Law firms and businesses use the standard forms supplied in form books or by legal stationers. If these were written in Plain English many consumers would benefit.

We recommend projects to:

make a critical study of published form books, forms and software packages in general use in Canada

investigate ways to encourage publishers to produce Plain English forms

collect and publicise Plain English forms used in private practice

3.5.7 *Statutes, regulations and by-laws*

We recommend projects to:

examine representative statutes, regulations and by-laws to find out who does consult them

examine statutes, regulations and by-laws to identify those which set conditions on how contracts must be written; determine if the conditions preclude Plain English

compile a bibliography of legislative drafting manuals

prepare a guide to Plain English legislative drafting which could be used in all jurisdictions

3.5.8 *Plain language laws*

Few business firms use Plain English contracts voluntarily.

We recommend that the Department of Justice begin work on a model Canadian plain language law to present to the appropriate provincial authorities.

3.5.9 *Dictionary of Canadian Legal Usage*

The design suggested by David Mellinkoff in 'The myth of precision and the law dictionary' (1983) is the one we favour. The compilers would favour Plain Legal Language terms.

3.5.10 *Guide to non-sexist legal writing*

There are useful general guides in print. We recommend another because of the particular problems of legal documents.

3.5.11 *Writing instruction for new judges*

The annual Writing Institutes cannot accept all the applications.
We recommend a review of the courses and guidelines for new judges.
Design and implement writing courses on the principles we have outlined in the jurisdictions where such courses are not already in place.

3.5.12 *The role of metaphor in legal writing*

Legal writing is assumed to be free of metaphor. Our reading does not bear out the assumption.
We recommend a study of the role of metaphor particularly in Candian legal writing.

3.5.13 *Plain French*

Is there such a thing? What are the style manuals? What is the influence of the civil code? Is the emergence of co-drafting in two languages (in effect federally since 1974; in the Province of Ontario more recently) changing the style of legal French?

4

Sources

Introduction to the bibliography

We have divided the bibliography into subject categories. They are essentially our working categories, the divisions which helped us make sense of the material. They do not correspond exactly to the sections of the inquiry.

The General Section includes material on reading and writing research. The Legal Writing Section contains articles dealing with a broad range of types of legal documents. Teaching Legal Writing includes law school courses, professional development seminars and workshops, and in-house courses.

We had hoped for a software package which would allow us to index each item and repeat it in the appropriate sections. The software didn't work. We repeated some items manually but we did not have time to do this on a consistent basis. Most appear only once.

We have used the citation format developed for *Information design: the design and evaluation of signs and printed material* (1984). This book contains the papers presented at the NATO Conference on Visual Presentation of Information, Netherlands 1978.

B1 GENERAL

Bird R (1983)
Osborn's concise law dictionary 7th ed
London: Sweet & Maxwell

Bishop O (1981)
Canadian official publications
Oxford: Pergamon Press

Britton J (1970)
Thought and learning
New York: Penguin

Emig J (1983)
The web of meaning: essays on writing, teaching, learning and thinking Edited by D Goswami, M Butler
Upper Montclair N J: Boynton/Cook

Fowler H W (1983)
A dictionary of modern English usage 2nd ed revised by Sir Ernest Gowers
Oxford: Oxford University Press

Gall G L (1977)
The Canadian legal system
Toronto: Carswell

Gould S J (1981)
The mismeasure of man
New York: Norton

Gowers E (1954)
The complete plain words
London: HMSO

Gowers E (1973)
The complete plain words Revised by B Fraser
London: HMSO

Hardy B (1977)
Narrative as a primary act of mind
in: *The cool web* Meek M, Warlow A, Barton G eds
London: The Bodley Head

Joos M (1961)
The five clocks
New York: Harcourt Brace Jovanovich

McMenemy J (1980)
The language of Canadian politics: a guide to important terms and concepts
Toronto: Wiley

Miller C, Swift K (1977)
Words and women
New York: Anchor Press

Mitchell R (1979)
Less than words can say
Boston: Little Brown

Mitchell R (1984)
The leaning tower of Babel
Boston: Little Brown

Murray D (1968)
A writer teaches writing: a practical method of teaching composition
Boston: Houghton Mifflin

Murray D (1980)
Writing as process: how writing finds its own meaning
In *Eight approaches to teaching composition* Urbana: NCTE

Murray D (1984)
Write to learn
New York: Holt Rinehart Winston

Postman N (1979)
Teaching as a conserving activity
New York: Dell

Postman N, Weingartner C (1966)
Linguistics: a revolution in teaching
New York: Dell

Smith F (1982)
Writing and the writer
New York: Holt Rinehart Winston

Smith F (1983)
Essays into literacy
London: Heinemann

Spender D (1980)
Man made language
London: Routledge Kegan Paul

Strunk W (1979)
The elements of style
With revisions, and introduction, and a chapter on writing by E.B. White 3d ed
New York: Macmillan

Thomas L (1979)
The medusa and the snail: more notes of a biology watcher
New York: Viking

Vygotsky S S (1962)
Thought and language
Translated by Hanfmann and Vakar
Cambridge: MIT Press

Waddams S M (1983)
Introduction to the study of law 2nd ed
Toronto: Carswell

White E B (1976)
Letters of E.B. White
Edited by D L Guth
New York: Harper & Row

B 2 LINGUISTICS

Alison R M (1979)
Confusa Multido
Chitty's Law Journal **27** 162-164

Andrews L B (1983)
Trial by language
Student Lawyer **12** 10-17

Arena L A (1982)
The language of corporate attorneys
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Bolinger D (1980)
Language - the loaded weapon
London: Longman

Brackenridge L (1981)
Linguistics and the professions: overview on the law
Linguistic Reporter **24** 4

Carrion-Wam R (1984)
Semiotica Juridica
Liverpool Law Review **Special Issue** 11-67

Chaim R A (1983)
A model for the analysis of the language of lawyers
Journal of Legal Education **33** 120-140

Charrow R P, Charrow V R (1979)
Making legal language understandable: a psycholinguistic study of jury instructions
Columbia Law Review **79** 1306-1374

Charrow V R (1984)
Legal language in the courtroom
Washington: Document Design Centre

Danet B (1980)
Language in the legal process
Law and Society Review **14** 445-564

Danet B (1983)
Law, bureaucracy and language
Society **20** 49-55

Darville R (1985)
The trouble with legal language
Ottawa: Canadian Legal Information Council

Di Pietro R J (1982)
Introduction to *Linguistics and the professions*
Proceedings of the second annual Delaware symposium on language studies
Norwood N J: Ablex

Downey P J (1984)
Plain meaning of plain words
New Zealand Law Journal **Feb** 29-30

Eagleson R D (1984)
Gobbledegook: the tyranny of linguistic conceits
Paper presented at Semiotic Conference on Language and Ideology
University of Sydney 21 July
Unpublished

Edwards S A (1979)
Interpretation of legal documents
Jurimetrics Journal **20** 174-194

Epstein J J (1982)
The grammar of a lie: its legal implications
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Finegan E (1982)
Form and function in testament language
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Goodrich P (1984a)
Language, text and sign in the history of legal doctrine
Liverpool Law Review **Special Issue** 95-120

Goodrich P (1984b)
Rhetoric as jurisprudence: an introduction to the politics of legal language
Oxford Journal of Legal Studies **4** 88-122

Goodrich P (1984c)
The role of linguistics in legal analysis
Modern Law Review **47** 523-534

Gumperz J J (1983)
Interethnic discourse
Society **20** 64-69

Heath S B (1983)
Ways with words: language, life, and work in communities and classrooms
Cambridge: Cambridge University Press

Kess J F (1985)
Psycholinguistic principles applied to jury instructions: a bibliography
Victoria B C: Department of Linguistics University of Victoria
Available from Canadian Law Information Council

Kess J F, Moppe R A (1985)
Formulating Canadian jury instructions: an exercise in applied psycholinguistics
Victoria B C: University of Victoria
Unpublished

Kevelson R (1982)
Language and legal speech acts
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Kevelson R (1984)
Toward a global perspective on legal semiotics
Liverpool Law Review **Special Issue** 81-93

Language problems [editorial] (1981)
New Law Journal **131** 127

Levi J N (1982)
Linguistics, language, and law: a topical bibliography
Bloomington: Indiana University Linguistics Club

Lowry H M (1979)
Normalization: a revolutionary approach
Jurimetrics Journal **20** 140-144

Maher F (1984)
Words, words, words
Melbourne University Law Review **14** 468-511

Maynard D W (1983)
Language in the court
American Bar Foundation Research Journal **Winter** 211-222

Mellinkoff D (1963)
The language of the law
Boston: Little, Brown

Murphy D (1979)
Legal language - help or hype?
Update **3** 42-45

Neate G J (1981)
Legal language across cultures: finding the traditional aboriginal owners of land
Federal Law Review **12** 187-211

O'Barr W M (1981)
The language of the law
In: C A Ferguson, S B Heath (Eds.) *Language in the USA*
London: Cambridge University Press

Peters E A (1981)
Reality and the language of the law
Yale Law Journal **90** 1193-1197

Saljo R (1982)
Learning and understanding: a study of differences in constructing meaning from a text
Goteberg: Acta Universitatis Gothburgensis

Shapiro M (1981)
On the regrettable decline of law French: or Shapiro jette! le brickbat [A response to C D Stone]
Yale Law Journal **90** 1198-1204

Shuy R W, Shnukal A (Eds.) (1980)
Language use and the uses of language
Washington: Georgetown University Press

Sinclair M B W (1985)
Law and language: the role of pragmatics in statutory interpretation
University of Pittsburg Law Review **Winter** 373-420

Stille A (1985)
Grandiloquent idiosyncracy
National Law Journal **7** 43

Stone C D (1981)
From a language perspective
Yale Law Journal **90** 1149-1192

Wright P (1981)
Is legal jargon a restrictive practice?
In: S Lloyd-Bostock (Ed.) *Psychology in legal contexts: applications and limitations*
London: Macmillan

Wright P (1982)
Textual literacy: an outline sketch of psychological research on reading and writing
In: P A Kolers, M E Wrolstad, H Bouma (Eds.) *Processing of visible language, v.2*
New York: Plenum

Zahn J B (1977)
Language and the law: towards a linguistic understanding
Chitty's Law Journal **25** 109-119

B 3 READABILITY

Baudin F (1984)
The visual editing of text
Visible Language **18** 81-86

Bentley D (1984)
How and why of readability
Reading: University of Reading School of Education Centre for Teaching of Reading

Campbell L J, Holland V M (1982)
Understanding the language of public documents because readability formulas don't
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Chall J S (1979)
Readability: in search of improvement
Publishers Weekly **40** 216

Darville R, Hiebert M (1985)
Small claims court materials: Can they be read? Can they be understood?
Ottawa: Canadian Law Information Council

Davison A (1985)
Readability and reading levels
In: *International encyclopedia of education: research and studies*
New York: Pergamon

Dickerson R (1985)
Plain English statutes and readability
Michigan Bar Journal **June** Part 1 567-569 **July** Part 2 714-716

Flesch R (1948)
A new readability yardstick
Journal of Applied Psychology **32** 221-233

Forms Information Centre University of Reading (1984)
Readability and readability formulas Topic sheet 4
Whiteknights Reading: The Centre

Fry E (1977)
Fry's readability graph: clarifications, validity, and extension to level 17
Journal of Reading **Dec** 242-252

Fry E (1979)
A reappraisal of formula writing
Publisher's Weekly **40** 217

Goyen J D
Adult literacy levels in Australia
Canberra: Information Co-ordination Branch Dep t of Special Minister of State

Green T R G, Payne S J (1982)
The woolly jumper: typographic problems of concurrency in information display
Visible Language **16** 391-403

Groff P (1983)
The significance of word length
Visible Language **17** 396-398

Hannah J (1984)
Readability formulas: a brief critique
Unpublished

Hiebert M (1985)
Readability
In Darville R *Small claims court materials*

Johnson F (1980)
Weighing in on the Flesch scale
Student Lawyer **Jan** 7-8

Karlin C J (1980)
Readability statutes - a survey and a proposed model
University of Kansas Law Review **28** 531-552

Keenan S A (1984)
Effects of chunking and line length on reading efficiency
Visible Language **18** 61-81

Kinneavy J L (1983)
The relation of the whole to the part in interpretation theory and in the composing process
Visible Language **17** 120-145

Kline C R Jr, Huff R K (1983)
Reading, writing: radix
Visible Language **17** 163-176

Kolers P (1975)
Readability
In: M L Friedland *Access to the law*
Toronto: Carswell

Kolers P (1977)
Reading
In: *International encyclopedia of psychiatry, psychology, psychoanalysis, and neurology*
New York: Aesculapius

Manning, A (1980)
An evaluation of the readability of publications regarding federal laws
Ottawa: Department of Justice

Olson D R (1982)
What is said and what is meant in speech and writing
Visible Language **16** 151-174

Perlman G, Erickson T D (1983)
Graphical abstractions of technical documents
Visible Language **17** 380-389

Purves A C (1985)
Composition instruction
In: *International encyclopedia of education: research and studies*
New York: Pergamon

Richaudeau F (1985)
Written instruction
In: *International encyclopedia of education: research and studies*
New York: Pergamon

Singer H (1985)
Comprehension instruction
In: *International encyclopedia of education: research and studies*
New York: Pergamon

Suchan J, Scott C (1984)
Readability levels of collective bargaining agreements
Personnel Administrator **29** 73+

Viskovic G (1983)
Communicating the law
Law Teacher **17** 30-41

Walmsley S A, Scott K M, Lehrer R (1981)
Effects of document simplification on the reading comprehension of the elderly
Journal of Reading Behavior **13** 237-248

Wardrop J L (1985)
Reading comprehension tests
In: *International encyclopedia of education: research and studies*
New York: Pergamon

B 4 LEGAL WRITING

Adams M H (1983)
Review of *Legal writing in a nutshell* by L B Squires and M D Rombauer
American Bar Association Journal **69** 214-215

Benotto M L (1985)
Conversation with Marion Blake 9 Oct

Block G H (1977)
What did you say? What did you mean?
Journal of Legal Education **28** 542-549

Block G H (1978)
Improving legal writing
Florida Bar Journal **52** 778 782

Blumberg R H (1979)
Lawyers can write clearly and coherently
New York State Bar Journal **51** 478-481

Bowers J (1984)
Consider your audience: more than most writers, lawyers must shape their writing according to the needs of their readers
California Lawyer **4** 62-64

Charrow R P (1983)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
University of California at Los Angeles Law Review **30** 1094-1102

Charrow V R (1981)
Improve your writing - and perhaps your image: dislike of legalese may be behind dislike of lawyers
California Law **1** 55-56

Collins T, Hattenhauer D (1983)
Law and language: a selected, annotated bibliography on legal writing
Journal of Legal Education **33** 141-151

Dale (Sir) W (1977)
Legislative drafting: a new approach: a comparative study of methods in France, Germany, Sweden and the United Kingdom
London: Butterworths

Darville R (1985)
Guidelines for writing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Denning Lord (1973)
Letter to R C Dick

Dick R C (1980)
Plain English in legal drafting
Alberta Law Review **18** 509-514

Dick R C (1985a)
Conversation with Marion Blake 27 Sept

Dick R C (1985b)
Legal drafting 2nd ed.
Toronto: Carswell

Dombroff M A (1984)
The right 'write' stuff; how 'litigation writing' is different from general 'legal writing'
National Law Journal **6** 15

Gibson G D (1980)
Effective legal writing and speaking
Business Lawyer **36** 1-9

Goldfarb R L, Raymond J C (1982)
Clear understandings: a guide to legal writing
New York: Random House
Review: *Michigan Law Review* **82** 968-970 (1984)

Haig P (1984)
Words: majority and approximately
New Zealand Law Journal **Nov** 380

Johnson F (1981a)
Less is more
Student Lawyer **May** 14-15

Johnson F (1981b)
The write stuff
Student Lawyer **Sept** 50-51

Johnson F (1981c)
Rules to write by: don't fill up the beginning of a sentence with verbiage - but don't waste your best material on it, either
Student Lawyer **Nov** 7-9

Lauwers P (1985)
Writing research memoranda
In: *Legal research and writing: a seminar*
Toronto: Young Lawyers' Division Canadian Bar Association - Ontario
Unpublished

Mellinkoff D (1963)
Language of the law
Boston: Little Brown

Mellinkoff D (1982)
Legal writing: sense and nonsense
St. Paul: West

Mellinkoff D (1983)
The myth of precision and the law dictionary
University of California at Los Angeles Law Review **32** 423-442

Prather W C (1978)
In defense of the people's use of three syllable words
Alabama Lawyer **39** 394-400

Raymond J C (1978)
Legal writing: an obstruction to justice
Alabama Law Review **30** 1-17

Reid G (1985)
Guidelines for editing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Romm E G (1985)
Hereinunder: how to write legalese
American Bar Association Journal **85** 146

Seltzer M B (1984)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
Minnesota Law Review **68** 1101-1106

Shapiro M (1981)
On the regrettable decline of law French: or Shapiro jettet le brickbat
Yale Law Journal **90** 1198-1204

Taylor M R (1982)
Effective legal writing: the lawyer s role as technician and artist in the written word
Advocate **40** 497-500

Trawick H P (1975)
Form as well as substance
Florida Bar Journal **49** 437-440

Williams J M (1981)
Style: ten lessons in clarity and grace
Chicago: Scott Foresman

Wright P (1979)
Getting it across
Legal Action Group Bulletin **Aug** 178-181

Younger I (1984)
In praise of simplicity
New Zealand Law Journal **Aug** 277-279

B 5 PLAIN ENGLISH: WRITING AND PROMOTING

Averbrook C J (1981)
Legalese vs. clear, readable writing: make the change now!
Florida Bar Journal **Oct** 624-630

Berry E (1984)
A practical approach for standardizing user documents
Journal of Systems Management **35** 8-11

Blumberg R H (1979)
Lawyers can write clearly and coherently
New York State Bar Journal **51** 478-481

Brand N (1982)
Institute on teaching legal writing
Washington: Document Design Centre

Charrow V (1979)
Let the rewriter beware
Washington: Document Design Centre

Clarity: a movement for the simplification of legal English (1983)
Clarity Newsletter **1**

Clepper I (1983)
Simply worded responses help consumers
Merchandising **8** 106

Cutts M Maher C (1980)
Writing plain English: a guide for writers and designers of official forms, leaflets, letters, labels and agreements
Stockport: Plain English Campaign

Dykstra G (1985)
Conversation with John Knechtel

Eagleson R D (nd)
Plain English in official writing
unpublished

Eagleson R D (1983)
The case for plain English
Plain English and Government Communications Seminar. Canberra
14 June
Unpublished

Eagleson R D (1984)
Gobbledegook: the tyranny of linguistic conceits
Sydney: Semiotic Conference on Language and Ideology, University of Sydney **21 July**
unpublished

Eagleson R D (1985a)
The commonsense of plain English
Current Affairs Bulletin **61** 14-20

Eagleson R D (1985b)
Progress in plain English: a report on recent developments overseas
Unpublished

Ely L S (1981)
The problem with plain talk is English
Best's Review (Property/Casualty) **82** 20+

Fingerhut M (1981)
The plain English movement in Canada
Canadian Business Law Journal **6** 446-452

Goldenberg S (1977)
Plain English is catching on: government and business move to use language we all understand
Financial Times **66 10 Oct** 45

Goldstein B H (1977)
Plain language: a comment and review on an aid to its achievment
Record **32** 662-665

Gray L L (1984)
Who's planing [sic] whose English, anyhow?
Bureaucrat **13** 3

Gt Brit Cabinet Office (1984)
The word is ...plain English

Gt Brit Cabinet Office Management and Personnel Office (1985)
Memo to communication, motivation and involvement staff with samples of plain English: insurance guides, Bradford Standing Orders unpublished, NHS Register

Harwood S S (1985)
Plain English in real property law
Michigan Bar Journal **64** 78 80

Hathaway G H (1983)
Bibliography of Plain English for lawyers
Michigan Bar Journal **62** 989-995

Hughes R D (1978)
Some plain talk about plain language
Record **33** 206-211

In plain English (1981)
Management Review **70** 5-6

Isaacs L M Jr., Goldstein B H (1978)
More plain talk
Record **33** 383-385

Johnson F (1980)
The plain truth: legalese still prevails
Student Lawyer **9** 21-22

Jones E Z Jones G M (1981)
Drafting government regulations and other legal documents in plain English: what difference does it make?
In: *Drafting documents in plain language* Givens R A ed.
Practicing Law Institute

Kellogg I (1981)
How to: a plan for drafting plain English
California State Bar Journal **April** 154-159

Learning to write plain English (1977)
Office **85** 34+

Lewis, D S (1981)
Plain English
Michigan Bar Journal **60** 338

Loff B
Social security: what's it all about anyway?
Australian Legal Service Bulletin

National Consumer Council (1984)
Plain English for lawyers: some guidelines on writing and designing legal documents
London: NCC

National Consumer Council and Plain English Campaign (1981)
Plain English Training Kit
Salford: Plain English Campaign

Nemschoff, H K (1980)
Language, constitutions and the laws
Public Affairs Reporter **21** 1-7

Plain English
Plain English Campaign Magazine

Redish J C [nd]
The Plain English movement
[no publication information; from CLIC collection]

Selected materials on "plain English" (1981)
The Record of the Association of the Bar of New York
36 **April** (5) 249-252

Shuptrine K F, Moore, E.M. (1980)
Even after the Magnusson-Moss Act of 1975 warranties are still not easy to understand
Journal of Consumer Affairs **14** 394-404

Siegel A (1977)
To lift the curse of legalese
Across the Board **14** 64-70

Siegel A (1979)
How to say it in plain English: fighting business gobbledygook
Management Review **68** 14-19

Siegel A (1981)
Plain English revolution
Across the Board **18** 19-26

Silas F A (1984)
'Gobbledegook': judge blasts medicare letter
American Bar Association Journal **70** 31

Thomas T Dunbar L (1984)
Plain English for lawyers: some guidelines on writing and designing legal documents
London: National Consumer Council

Toward a tax act that Canadians can understand (1983)
Financial Times of Canada **71** 13

Trawick H P (1975)
Form as well as substance
Florida Bar Journal **49** 437-40

U S Department of Commerce (1984)
How Plain English works for business: twelve case studies
Washington: The Office

Walker J C (1981)
Dynamics of clear contract law
Personnel Journal **60** 39-41

War on gobbledegook - report from the front (1981)
US News and World Report **15 Sep** 71-72

Whiting T (1983)
Plain English - standing orders for contracts
New Law Journal **7 Oct** 884-886

Whiting T (1984)
Plain English
The Law Society Gazette **15 Feb** 403-404

Word T S Jr (1980)
A brief for Plain English will and trusts
University of Richmond Law Review **14** 471-481

Wydick R C (1978)
Plain English for lawyers
California Law Review **66** 727-765

Wydick R C (1979)
Plain English for lawyers
Durham: Carolina Academic Press

Wydick R C (1980)
Review of How to write plain English R Flesch
Michigan Law Review **76** 711-721

B 6 PLAIN LANGUAGE LAWS

American Bar Association. Corporation, Banking and Business Law (1979)
Plain language legislation: a report by the Committee on Regulation of Consumer Credit
Business Law **35** 297-302

Appleson G (1983)
Philly bar backs plain English law
Bar Leader **8** 33

Assocation of the Bar of the City of New York. Special Committee on Consumer Affairs (1978)
The plain language law
The Record **33** 160-166

Black B (1981)
A model plain language law
Stanford Law Review **33** 255-295

Block G (1980)
Plain language laws: promise vs performance
Michigan Bar Journal **59** 762-764

Brand N Emery F (1980)
The trouble with Governor Carey's attack on legalese [Letter to the Editor]
The New York Times **13 May**

Ciaramitaro N (1983)
Plain English in consumer contracts
Michigan Bar Journal **62** 959-961

Clarity: a movement for the simplification of legal English [editorial] (1983)
Clarity Newsletter **1**

Cohen D S (1981)
Comment on the plain English movement
Canadian Business Law Journal **6** 421-452

Dickerson R (1985)
Plain English statutes and readability
[Excerpts from R Dickerson's *Fundamentals of legal drafting*]
Michigan Bar Journal **64** 567-569

Felsenfeld C, Cohen D S, Fingerhut M (1981)
The plain English movement in the United States [panel discussion]
Canadian Business Law Journal **6** 408-452

Ferry M (1980)
Plain language legislation: further considerations
Case and Comment **85** 34-38

Ferry M, Teitelman R B (1980)
Plain language laws: giving the consumer an even break
Clearinghouse Review **Oct** 522-528

Fingerhut M (1981)
The plain English movement in Canada
Canadian Business Law Journal **6** 446-452

Forshey J R (1978)
Plain English contracts: the demise of legalese?
Baylor Law Review **30** 765-783

Givens R A (1978)
Plain English law
New York State Bar Journal **50** 479-481

Goldstein B H (1977)
Plain language: a comment and review on an aid to its achievement
The Record **32** 662-665

Harwood S S (1985)
Plain English in real property law
Michigan Bar Journal **64** 78-80

Hathaway G H (1983)
Bibliography of plain English for lawyers
Michigan Bar Journal 989-993

Hughes M F [nd]
Plain language in policies and in court
Unpublished [in CLIC collection]

Hughes M F (1984)
A history of the New Jersey plain language statute
Seton Hall Legislative Journal **8** 193-208

Hughes R D (1978)
Some plain talk about plain language
The Record **33** 206-211

Isaacs L M Jr, Goldstein B H (1978)
More plain talk
The Record **33** 383-385

Johnson F (1980)
The plain truth: legalese still prevails
Student Lawyer **Dec** 21-22

Johnson F (1982)
This is plainly a success story in the never-ending fight to have consumer contracts in language that the average person can understand
Student Lawyer **Feb** 9-11

Judge hits legal gobbledegook [editorial] (1981)
Law Institute Journal **55** 676-677

Kretz W A Jr. (1978)
Plain English law: let the buyer beware
New York Law School Review **23** 824-833

Leete B A (1981)
Plain language legislation: a comparison of approaches
American Business Law Journal **18** 511-524

Mancini R (1982)
Press release announcing introduction in Ontario legislature of *An act to require that consumer contracts be readable and understandable*
1 June

Mancini R (1982)
Press release announcing debate on *An act* . . .
12 Oct

Maynard D W (1983)
Language in the court
American Bar Foundation Research Journal **Winter** 211-222

Millus A J (1983)
Plain language laws: are they working?
Uniform Commercial Code Law Journal **16** 147-158

Montague J E (1984)
Plain words for consumers: the language and layout of consumer contracts: the case for a plain language law
Law Teacher **18** 232-233

Moukad R (1980)
New York's plain English law
Fordham Urban Law Journal **8** 451-465

New York businesses learning plain English (1979)
American Bar Association Journal **65** 37-38

O'Connor W J Jr. (1979)
Plain English
Business Lawyer **34** 1453-1458

Ontario Legislative Assembly (1983a)
Bill 63. An act to require that consumer contracts be readable and understandable. Mr. Mancini

Ontario Legislative Assembly (1983b)
Second reading Plain Language Act
Hansard Official Report of Debates. Third Session 32nd Parliament 27 Oct 2505-2515

Plack J T (1980)
Plain language movement: an overview with recent developments
Journal of the Missouri Bar **36** 40-47

Rebellion against a plain English law (1978)
Business Week **23 Jan** 112

Ross S M (1981)
On legalities and linguistics: plain language legislation
Buffalo Law Review **30** 317-363

Sandrock O (1978)
Standard terms act 1976 of West Germany
American Journal of Comparative Law **26** 551-572

Semegen P W (1980)
Plain language legislation
Case and Comment **85** 42-49

Silas F A (1984)
Gobbledygook: judge blasts medicare letter
A.B.A. Journal **70** 31

Thomas R, Dunbar L (1984)
Plain words for consumers
London: National Consumer Council

Towards the simplification of inter-personal verbalized communications (1984)
The Conveyancer and Property Lawyer **Sept-Oct** 325-329

War on gobbledygook - report from the front (1980)
U.S. News and World Report **Sept 15** 71-72

Wetter J M
Plain language in Pennsylvania: fading issue or development on the horizon
Dickinson Law Review **89** 441-471

Willis J (1978)
Making legal documents readable: some American initiatives
Law Institute Journal **52** 513-522

Winter F (1980)
Legalese, bafflegab and plain language laws
Canadian Community Law Journal **4** 5-14

B 7 CONSUMER CONTRACTS

Adams J N (1978)
The standardization of commercial contracts, or The contractualization of standard forms
Anglo-American Law Review **7** 136-154

Appleman J A (1977)
"Jabberwocky" revisited - or, what does my policy cover?
Insurance Law Journal **May** 279-284

Bank of Nova Sccotia (1979a)
Scotiabank introduces simplified consumer loan forms
Press release 3 April

Bank of Nova Scotia (1979b)
Statement by Mr. Woolsey at Toronto news conference 3 April

Beware the abominable layman (1982)
The Conveyancer **Nov-Dec** 397-399

Blumberg R H (1979)
The mechanics of simplification: standard form contracts: a case history
In: *Drafting documents in plain language* McDonald D A, ed
New York: Practicing Law Institute

Browne D G (1979)
Development of the FNMA-FHLMC plain language mortgage documents - some useful techniques
Real Property, Probate & Trust Journal **14** 696-721

Campbell M W (1981)
Insurance contracts: diverse judicial approaches for determining ambiguity in Missouri
Missouri Law Review **46** 447-459

Ciaramitaro N (1983a)
Plain English in consumer contracts
Michigan Bar Journal **62** 959-961

Ciaramitaro N (1983b)
Plain English in insurance contracts
Michigan Bar Journal **62** 961-962

Clarke M (1976)
Notice of contractual terms
Cambridge Law Journal **35** 51-81

Courts prodding underwriters to choose the right word (1981)
National Underwriter **85** 46-47

Cutts M, Maher C (1983)
Small print: the language and layout of consumer contracts
London: National Consumer Council

Davis J (1977)
Protecting consumers from disclosures and gobbledygook: an empirical look at the simplification of consumer-credit contracts
Virginia Law Review ***63*** 841-920

Decker R (1984)
It helps to know the rules for clarifying contract terms: what you write is more likely to be what you get if you know how the law will interpret doubtful contract language
Purchasing **96** 89

Dick R C (1985)
Legal drafting 2nd ed
Toronto: Carswell

Dugan R (1978)
Standardized form contracts: an introduction
Wayne Law Review **24** 1307-1337

Dugan R (1979)
Standardized forms: Unconscionability and good faith
New England Law Review **14** 711-754

Eagleson R D (1985a)
Plain English: a sound investment
Currency **June** 7-11

Eagleson R D (1985b)
Plain speaking for profitability
Modern Office (Australia) **24** 10

"Eliminating a sore spot for a bank's customers" (1976)
Nation's Business **64** 72

Ely L S (1981)
"The problem with plain talk is English"
Best's Review **82** 20+

Felsenfeld C, Cohen D S, Fingerhut M (1981-82)
The plain English movement - panel discussion
Canadian Business Law Journal **6** 408-452

Ferry M, Teitelman R B (1980)
Plain language laws: giving the consumer an even break
Clearinghouse Review **14** 522-528

Findlay G S (1985)
Conversation with Marion Blake 1 Oct

Foden T (1985)
Conversation with Marion Blake 13 Sept

Forshey J R (1978)
Plain English contracts: the demise of legalese?
Baylor Law Review **30** 765-783

Gottsegen S W (1981)
Insurance - a new approach for the interpretation of insurance contracts
Wake Forest Law Review **17** 140-152

Gt. Brit. Statutory Instruments (1983)
The consumer credit (agreements) regulations 1983 No. 1553
London: HMSO

Griffin R C (1978)
Standard form contracts
North Carolina Central Law Journal **9** 158-177

Hall S (1985a)
Telephone conversation with Marion Blake 9 Oct

Hall S (1985b)
Letter 16 Oct

Hughes M F (no date)
Plain language in policies and in court
Unpublished

In plain English [editorial] (1984)
Globe & Mail **10 Jan**

Jackson D E (1985)
Conversation with Marion Blake 8 Oct

Jackson D E, Clark B L (1982)
"Clear language" - the industry's drive for policy readability
Canadian Insurance/Agent & Broker **June** 14+

Jacobs E J (1983)
Written standard terms of business
Journal of Business Law **May** 226-233

King N (1983)
Plain English documents: a commercial view
In *Plain English in government communications* Canberra 14 June

Language: Shakespeare would cringe [editorial]
Windsor Star **10 Jan**

Lapatine J D (1979)
Plain language: saying it simply isn't so simple
ABA Banking Journal **Nov** 127-130

Latourette A W (1974)
The role of public policy and reasonable expectations in construing insurance contracts
Temple Law Quarterly **47** 748-760

Liosnoff A (1983)
Don't wait for a "plain English" law
ABA Banking Journal **75** 58+

Myers et al. v Royal Insurance Co. of Canada et al.
Ontario Reports **49 O.R. 2d**

Nader R (1976)
Consumerism and legal services: the merging of movements
Law and Society Review **11** 247-256

National Consumer Council (1984)
Plain words for consumers: the language and layout of consumer contracts: the case for a plain language law
London: National Consumer Council

O'Connor W J Jr (1979)
Plain English
Business Lawyer **34** 1453-1458

Paul B (1985)
Consumers eye policy readability
National Underwriter Life and Health Insurance Edition **89** 9+

Perlet H F (1984)
Problems in drafting plain language property and casualty policies and their reception in the courts
Unpublished

Plain English says it better (1980)
Financial Post **74** 55

Redish J C [nd]
Beyond readability: how to write and design understandable life insurance policies
American Council of Life Insurance Commitee on Consumer Affairs

Regan R (1985)
Conversation with Marion Blake 18 Sep

Ritter P A (1981)
Simplification of legal language and The Bank of Nova Scotia plain language mortgage form
University of Toronto Faculty of Law Review **39** 170-179

Roman A (1980)
Interview on Scotia loan forms by Joe Cote
CBC Toronto Metro Morning **9 Jan**

Roseman E (1978)
Plain-English insurance policies: a trend in contracts?
Globe & Mail **1 May**

Roseman E (1980)
Plain English will eliminate confusion in legal documents
Globe and Mail **24 Jan** T1

Rotkin L (1977)
Standard forms: legal documents in search of an appropriate body of law
Arizona State Law Journal 599-624

Siegel A (1977)
To lift the curse of legalese - SIMPLIFY, SIMPLIFY
Across the Board **June** 64-70

Siegel A (1979)
Deciphering the accountants' Rosetta Stone: language simplifiation of financial notes
Credit and Financial Management **Oct** 18-21

Siegel A (1980)
Plain English policies in action
Best's Review: Property/Casualty Insurance Edition **80** 22,24

Slawson W D (1984)
The new meaning of contract: the transformation of contracts law by standard forms
University of Pittsburgh Law Review **46** 21-74

Smith B (1980)
Legal jargon replaced on Scotia loan forms
Globe and Mail **8 Jan** 5

Smith E (1985)
New look forms for business
British Printer **Aug** 14-16

Squires L B (1981)
Comprehensible due-on-sale clause
The Practical Lawyer **27** 67-74

Squires L B (1984)
Autopsy of a plain English insurance contract: can plain English survive proximate cause?
Washington Law Review **59** 565-584

Steeler M F (1977)
Plain language policies
Canadian Insurance/Agent & Broker **May**

Tilden-Rent-A-Car Co. v. Clendenning (Dubin J A) (1978)
Dominion Law Reports **83 D.L.R. (3d)**

Translating legalese into English (1976)
Business Week **25 Oct** 94+

US Dep't of Commerce Office of Consumer Affairs (1984)
How plain English works for business: twelve case studies
Washington: Dep't of Commerce Office of Consumer Affairs

Whincap M (1984)
How to fill in forms and avoid the law
Management Today **Feb** 35+

Young E N, Lewis J R, Lee J F (1975)
Insurance contract interpretation: issues and trends
Insurance Law Journal **Feb** 71-81

B 8 ADMINISTRATIVE FORMS

Eagleson R D (1983)
The reform of documents within government departments in the United Kingdom
Unpublished

Eagleson R D (1985a)
Adult literacy: plain English and official documents
Unpublished

Eagleson R D (1985b)
Plain English in official writing
Canberra: Information Co-ordination Branch Department of Sport and Recreation

Firth D (1980)
An investigation of the success of redesigned supplementary benefit documents
Information design journal 2 33-43

Forms Information Centre University of Reading (1983)
Forms design: a guide to reading and reference material
Whiteknights Reading: The Centre

Forms Information Centre University of Reading (1984a)
News Sheet 1. Language of forms

Forms Information Centre University of Reading (1984b)
Topic sheets : 1 Legibility 2 Signature space 3 Questions and answers 4 Readability and readability formulas
Whiteknights Reading: The Centre

Frohlich D M (1985)
Human factors in form design [draft]
Alvey DHSS Demonstrator at Surrey Report

Golshani D (1985)
Conversation with Marion Blake 7 Oct

Gt Brit Cabinet Office Management and Personnel Office [nd]
Guidelines on administrative forms: Forms control/Forms design
London: Cabinet Office

Gt Brit Cabinet Office Management and Personnel Office (1985)
The Plain English Exhibition
Press release

Gt Brit Dep't of Health and Social Security (1983, 1985)
The good forms guide and *Supplements*
London: DHSS

Gt Brit Parliament (1982)
Administrative forms in government
Presented to Parliament by the Chancellor of the Duchy of Lancaster
London: HMSO [Cmnd 8504]

Hannah J [nd]
Generic coding of attributes on Department of Health and Social Security forms
Department of Typography and Communications University of Reading
Unpublished

Harris W B (1985)
Converation with Marion Blake 8 Oct

Information design: the design and evaluation of signs and printed material (1984)
R Easterby, H Zwaga (Eds.)
NATO Conference on Visual Presentation of Information Het Vennenbos Netherlands 1978
Chichester: Wiley

Kempson E (1985)
Designing public documents: a review of research and other documents
v 1 Description of the research v 2 Annotated reviews of research reports
Commissioned by the Information Division Department of Health and Social Security
Draft

Kirk N A (1979)
Legal restraints in forms design
Journal of Systems Management **30** 38-42

Korsik M (1985)
Conversation with Marion Blake 2 Oct

Lynton M (1985)
Government forms testing: use of market research for the testing of government forms
Canberra: Inormation Co-ordination Branch Department of Sport and Recreation

McIntyre C (1984)
A reformation of official paperwork
Lithoweek **13 June** 25-27

Scott J (1985a)
Conversation with John Knechtel 15 Aug

Scott J (1985b)
InFORMation
Forms Focus **2** 2

Scott J (1985c)
Step 3: Who will use the form?
In *The Inland Revenue forms design manual*
In process

Smith E (1985)
New-look forms for business
British Printer **Aug** 14-16

Vernon T (1980)
Gobbledegook: a critical reveiw of official forms and leaflets and how to improve them
London: National Consumer Council

Welch E H (1985)
Conversation with Marion Blake 2 Oct

Whiteley C H (1985)
Telephone conversation with Marion Blake 4 Oct

B 4 LEGAL WRITING

Adams M H (1983)
Review of *Legal writing in a nutshell* by L B Squires and M D Rombauer
American Bar Assocation Journal **69** 214-215

Benotto M L (1985)
Conversation with Marion Blake 9 Oct

Block G H (1977)
What did you say? What did you mean?
Journal of Legal Education **28** 542-549

Block G H (1978)
Improving legal writing
Florida Bar Journal **52** 778-782

Blumberg R H (1979)
Lawyers can write clearly and coherently
New York State Bar Journal **51** 478-481

Bowers J (1984)
Consider your audience: more than most writers, lawyers must shape their writing according to the needs of their readers
California Lawyer **4** 62-64

Charrow R P (1983)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
University of California at Los Angeles Law Review **30** 1094-1102

Charrow V R (1981)
Improve your writing - and perhaps your image: dislike of legalese may be behind dislike of lawyers
California Law **1** 55-56

Collins T, Hattenhauer D (1983)
Law and language: a selected, annotated bibliography on legal writing
Journal of Legal Education **33** 141-151

Dale (Sir) W (1977)
Legislative drafting: a new approach: a comparative study of methods in France, Germany, Sweden and the United Kingdom
London: Butterworths

Darville R (1985)
Guidelines for writing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Denning Lord (1973)
Letter to R C Dick

Dick R C (1980)
Plain English in legal drafting
Alberta Law Review **18** 509-514

Dick R C (1985a)
Conversation with Marion Blake 27 Sept

Dick R C (1985b)
Legal drafting 2nd ed.
Toronto: Carswell

Dombroff M A (1984)
The right 'write' stuff; how 'litigation writing' is different from general 'legal writing'
National Law Journal **6** 15

Gibson G D (1980)
Effective legal writing and speaking
Business Lawyer **36** 1-9

Goldfarb R L, Raymond J C (1982)
Clear understandings: a guide to legal writing
New York: Random House
Review: *Michigan Law Review* **82** 968-970 (1984)

Haig P (1984)
Words: majority and approximately
New Zealand Law Journal **Nov** 380

Johnson F (1981a)
Less is more
Student Lawyer **May** 14-15

Johnson F (1981b)
The write stuff
Student Lawyer **Sept** 50-51

Johnson F (1981c)
Rules to write by: don't fill up the beginning of a sentence with verbiage - but don't waste your best material on it, either
Student Lawyer **Nov** 7-9

Lauwers P (1985)
Writing research memoranda
In: *Legal research and writing: a seminar*
Toronto: Young Lawyers' Division Canadian Bar Association - Ontario
Unpublished

Mellinkoff D (1963)
Language of the law
Boston: Little Brown

Mellinkoff D (1982)
Legal writing: sense and nonsense
St. Paul: West

Mellinkoff D (1983)
The myth of precision and the law dictionary
University of California at Los Angeles Law Review **32** 423-442

Prather W C (1978)
In defense of the people's use of three syllable words
Alabama Lawyer **39** 394-400

Raymond J C (1978)
Legal writing: an obstruction to justice
Alabama Law Review **30** 1-17

Reid G (1985)
Guidelines for editing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Romm E G (1985)
Hereinunder: how to write legalese
American Bar Association Journal **85** 146

Seltzer M B (1984)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
Minnesota Law Review **68** 1101-1106

Shapiro M (1981)
On the regrettable decline of law French: or Shapiro jettet le brickbat
Yale Law Journal **90** 1198-1204

Taylor M R (1982)
Effective legal writing: the lawyer's role as technician and artist in the written word
Advocate **40** 497-500

Trawick H P (1975)
Form as well as substance
Florida Bar Journal **49** 437-440

Williams J M (1981)
Style: ten lessons in clarity and grace
Chicago: Scott Foresman

Wright P (1979)
Getting it across
Legal Action Group Bulletin **Aug** 178-181

Younger I (1984)
In praise of simplicity
New Zealand Law Journal **Aug** 277-279

B 10 STATUTES REGULATIONS BY-LAWS

Arbab-Deh Kordi B (1982)
Statistical analysis of statutory texts
Computers and Law **32** 4-6

Bennion F A R (1978)
Statute law obscurity and the drafting parameters
British Journal of Law & Society **5** 235-245

Bennion F A R (1980)
Statute law processing: the composite restatement method (2 parts)
Solicitor's Journal **124** 71 (Feb 1) 92 (Feb 8)

Bennion F A R (1981)
Leave my word alone
New Law Journal **131** 596-597

Benson R W (1984)
Up a statute with a gun and a camera: isolating linguistic and logical structures in the analysis of legislative language
Seton Hall Legal Journal **8** 279-305

Bertrand G (1985)
Conversation with Marion Blake 10 Sept

Boyer J P (1975)
Role of legislative counsel and the continuing quest to exorcise "ambiguity, obscurity, and disharmony" from our statutes
University of Toronto Faculty of Law Review **33** 91-99

Can the Internal Revenue Code be written clearly and concisely? (1984)
St. Mary's Law Journal **15** 709-711

Canada Dept of Justice (1984)
Guide canadien de redaction legislative francaise
Ottawa: The Department

Canada Dept of Justice Privy Council Office Section (1985)
Guide de redaction francaise des reglements
Unpublished

Canada Dept of Justice Privy Council Office Section (1985)
Manual on the drafting of regulations in English
Unpublished

Canada Privy Council Office (1981)
The preparation of legislation
Ottawa: The Office

Chan T Y (1976)
Changes in form of New Zealand statutes
Victoria University of Wellington Law Review **8** 318-342

Desjardins J (1985)
Conversation with Marion Blake 10 Sept

Dickerson R (1985)
Plain English statutes and readability
Michigan Bar Journal Part I **June** 567-569 Part II **July** 714-716

Downey P J (1984)
Plain meaning of plain words
New Zealand Law Journal **Feb** 29-30

Dreidger E A (1976)
A manual of instructions for legislative and legal writing
Ottawa: Dept. of Justice

Driedger E A (1979)
The composition of legislation: legislative forms & precedents 2nd ed
Ottawa: Department of Justice

Dreidger E A (1983)
Construction of statutes 2nd ed
Toronto: Butterworths

Eagleson R D (1985)
Plain English in the statutes
Law Institute Journal **July** 673-675

Edwards S E (1984)
Drafting fiscal legislation
Canadian Tax Journal **32** 739-744

Engholm R (1976)
Logic and laws: relief from statutory obfuscation
University of Michigan Journal of Law Reform **9** 322-347

Friedland M L (1975)
Access to the law: a study conducted for the Law Reform Commission of Canada
Toronto: Carswell

Gt Brit Department of the Environment (1983)
Model standing orders for Local Authority contracts
Circular **15**

Havemann J (1977)
The headache of writing regulations in a new language - English
National Journal **9** 1769-1771

Herman S (1977)
Command vs. purpose: the Scylla and Charybdis of the code drafter
Tulane Law Review **52** 115-128

Hussey W M (1984)
Drafting simpler U.S. tax laws
Canadian Tax Journal **32** 739-744

Jackson R J, Atkinson M M (1980)
The Canadian legislative system: politicians and policymaking 2nd ed
Toronto: Macmillan

Kennanization (1985)
Law Institute Journal **July** 675

Larson N (1985)
Telephone conversation with Marion Blake 4 Oct

MacPherson D (1985)
Conversation with Marion Blake 9 Sept

Mason S (1985)
Private letter to Marion Blake

Montgomery County Maryland (1985)
Plain language drafting manual
Unpublished

National Consumer Council, Welsh Consumer Council (1979)
Simple justice: a consumer view of small claims procedures in England and Wales
London: NCC

Neilson A W, MacPherson J C (Eds.) (1978)
The legislative process in Canada: the need for reform
Toronto: Institute for Research on Public Policy

Nemschoff H K (1980)
Language, constitutions and the laws
Public Affairs Report **21 June** 1-7

Ontario Ministry of the Attorney General (1984)
Ontario English-French legal lexicon
Toronto: The Ministry

Redish J C (1981)
How to write regulations (and other legal documents) in clear English
Washington: Document Design Center

Reid T (1983)
Correspondence: Letter to thePrivy Council
New Zealand Law Journal **April** 102-103

Richeson M (1985)
Conversation with Marion Blake 9 Sept

Rivard G (1985)
Conversation with Marion Blake 9 Sept

Ruoff J (1983)
Links with London
Australian Law Journal **57** 478-480

Safire W (1985)
On langauge: Hot to redact
New York Times Magazine **29 Sept** 8, 10

Stone A W (1985a)
Bi-lingual drafting in a common law jurisdiction
Paper presented to the Legislative Drafting Section of the Uniform Law Conference of Canada
Unpublished

Stone A W (1985b)
Conversaton with Marion Blake 24 Sept

Stone A W (1985c)
Legislative process
Paper presented to the Canadian Bar Association
Unpublished

Toronto City Hall (1984)
Report of the Mayor's Task Force on the City of Toronto Zoning By-law

Tremblay R, Journeault-Turgeon R, Lagace J (1984)
Guide de redaction legislative
Quebec: Ministere de la Justice Direction generale des affaires legislatives

Turning federalese into plain English (1977)
Business Week **9 May** 58

Uniform Law Conference of Canada (1984)
Proceedings of the 66th annual meeting

Walker J C (1981)
Dynamics of clear contract law
Personnel Journal **60** 39-41

Williams G (1985)
Conversation with Marion Blake 10 Sept

B 11 JUDGES

Andrews L B (1983)
Trial by language. (psychollinguistics)
Student Lawyer **12** 10-17

Bennion F A R (1981)
Leave my word alone
New Law Journal **131** 596-597

Carrion-Wam R (1984)
Semiotica juridica
Liverpool Law Review **Special Issue** 11-67

Charrow R P (1979)
Making legal language understandable: a psycholinguistic study of jury instruction
Columbia Law Review **79** 1306-1374

Denning, Lord (1979)
The discipline of law
London: Butterworths

Denning, Lord (1980)
The due process of law
London: Butterworths

Denning, Lord (1982)
What next in the law
London: Butterworths

Denning, Lord (1983)
The closing chapter
London: Butterworths

Griffiths, The Hon. Mr. Justice (1985)
Conversation with Marion Blake 15 Oct

Kevelson R (1982)
Language and legal speech acts: decisions
In: R J Di Pietro (Ed.) *Linguistics and the professions*
Norwood N J: Ablex

Mortimer, John (1983)
Lord Denning: long life, short sentences
in *In Character*
Harmondsworth: Penguin (1984)

Simply put [editorial] (1984))
Globe and Mail **27 Oct**

Strauss M (1984)
Drop legal jargon, Dubin urges judges
Globe and Mail **27 Oct** 16

B 4 LEGAL WRITING

Adams M H (1983)
Review of *Legal writing in a nutshell* by L B Squires and M D Rombauer
American Bar Assocation Journal **69** 214-215

Benotto M L (1985)
Conversation with Marion Blake 9 Oct

Block G H (1977)
What did you say? What did you mean?
Journal of Legal Education **28** 542-549

Block G H (1978)
Improving legal writing
Florida Bar Journal **52** 778-782

Blumberg R H (1979)
Lawyers can write clearly and coherently
New York State Bar Journal **51** 478-481

Bowers J (1984)
Consider your audience: more than most writers, lawyers must shape their writing according to the needs of their readers
California Lawyer **4** 62-64

Charrow R P (1983)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
University of California at Los Angeles Law Review **30** 1094-1102

Charrow V R (1981)
Improve your writing - and perhaps your image: dislike of legalese may be behind dislike of lawyers
California Law **1** 55-56

Collins T, Hattenhauer D (1983)
Law and language: a selected, annotated bibliography on legal writing
Journal of Legal Education **33** 141-151

Dale (Sir) W (1977)
Legislative drafting: a new approach: a comparative study of methods in France, Germany, Sweden and the United Kingdom
London: Butterworths

Darville R (1985)
Guidelines for writing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Denning Lord (1973)
Letter to R C Dick

Dick R C (1980)
Plain English in legal drafting
Alberta Law Review **18** 509-514

Dick R C (1985a)
Conversation with Marion Blake 27 Sept

Dick R C (1985b)
Legal drafting 2nd ed.
Toronto: Carswell

Dombroff M A (1984)
The right 'write' stuff; how 'litigation writing' is different from general 'legal writing'
National Law Journal **6** 15

Gibson G D (1980)
Effective legal writing and speaking
Business Lawyer **36** 1-9

Goldfarb R L, Raymond J C (1982)
Clear understandings: a guide to legal writing
New York: Random House
Review: *Michigan Law Review* **82** 968-970 (1984)

Haig P (1984)
Words: majority and approximately
New Zealand Law Journal **Nov** 380

Johnson F (1981a)
Less is more
Student Lawyer **May** 14-15

Johnson F (1981b)
The write stuff
Student Lawyer **Sept** 50-51

Johnson F (1981c)
Rules to write by: don't fill up the beginning of a sentence with verbiage - but don't waste your best material on it, either
Student Lawyer **Nov** 7-9

Lauwers P (1985)
Writing research memoranda
In: *Legal research and writing: a seminar*
Toronto: Young Lawyers' Division Canadian Bar Association - Ontario
Unpublished

Mellinkoff D (1963)
Language of the law
Boston: Little Brown

Mellinkoff D (1982)
Legal writing: sense and nonsense
St. Paul: West

Mellinkoff D (1983)
The myth of precision and the law dictionary
University of California at Los Angeles Law Review **32** 423-442

Prather W C (1978)
In defense of the people's use of three syllable words
Alabama Lawyer **39** 394-400

Raymond J C (1978)
Legal writing: an obstruction to justice
Alabama Law Review **30** 1-17

Reid G (1985)
Guidelines for editing
In: *Preparing information on the law: guidelines for writing, editing and designing*
Canadian Law Information Council

Romm E G (1985)
Hereinunder: how to write legalese
American Bar Association Journal **85** 146

Seltzer M B (1984)
Review of *Legal writing: sense and nonsense* by D Mellinkoff
Minnesota Law Review **68** 1101-1106

Shapiro M (1981)
On the regrettable decline of law French: or Shapiro jettet le brickbat
Yale Law Journal **90** 1198-1204

Taylor M R (1982)
Effective legal writing: the lawyer's role as technician and artist in the written word
Advocate **40** 497-500

Trawick H P (1975)
Form as well as substance
Florida Bar Journal **49** 437-440

Williams J M (1981)
Style: ten lessons in clarity and grace
Chicago: Scott Foresman

Wright P (1979)
Getting it across
Legal Action Group Bulletin **Aug** 178-181

Younger I (1984)
In praise of simplicity
New Zealand Law Journal **Aug** 277-279

This section is intended to give a sense of the kinds of articles about plain language and the law that are being published. It is only a sample. We have divided it into three parts - Canadian, American, British - and arranged each part chronologically.

We uncovered most of the Canadian items by an on-line search of Canada's national newspaper, the *Globe and Mail*. The indexing in that data base, InfoGlobe, is not completely reliable. The search failed to turn up items which we knew were there. The Bank of Nova Scotia clipping file produced most of the items surrounding the BNS Plain English forms. We used the clipping file at Metro Toronto Reference Library, City Hall, for items on the Toronto Zoning By-law (Section 19.3) but we do not list any of those items.

The Canadian Broadcasting Corporation is indexing its national radio programmes on a selective basis. They had nothing yet on our topic. The local CBC item is from the BNS file.

Major American newspapers are well indexed.

The British items are a selection of some of the most recent from the 200 newspaper clippings we photocopied at the National Consumer Council, London. We expect that this collection will be available at the Canadian Law Information Council, Toronto.

Canadian

Goldenberg S (1977)
"Plain English is catching on"
Financial Times of Canada **10 Oct** 4-5

"Legalese out, English in as New York passes law" (1978)
Financial Times of Canada **13 Nov** 24-25

Donev S (1978)
"Plain English set for a comeback"
Toronto Star **18 Nov** 1+

Roseman E (1978)
Plain English insurance policies: a trend in contracts?
Globe and Mail **1 May**

Roman A (1980)
Interview on Scotia loan forms by Joe Cote
CBC Metro Morning **9 Jan**

Roseman E (1980)
Plain English will eliminate confusion in legal documents
Globe and Mail **24 Jan** T1

Smith B (1980)
"Legal jargon replaced on Scotia loan forms"
Globe and Mail **8 Jan** 5

Firby D (1980)
"Two companies take fog out of their legal language"
The Windsor Star **7 Feb**

Harper T (1982)
"Drop legalese hereinafter, lawyers told"
The Toronto Star **2 Sept** A1

Brett G (1983)
"Plain-language mortgages cut legal lingo"
The Toronto Star **27 March**

In plain English [editorial] (1984)
Globe and Mail **10 Jan**

Simply put [editorial] (1984)
Globe and Mail **27 Oct**

Strauss M (1984)
Drop legal jargon, Dubin urges judges
Globe and Mail **27 Oct** 16

American

Brown R (1977)
"Reporting legalistic jargon"
Editor and Publisher **19 March** 48

Nagdeman J J (1977)
"Out with gobbledegook: simple legal language is an idea whose time has come"
Barron's **25 July** 3+

Fanning P (1978)
"Modes to defuzzify officialese impact minutely resultwise; Carter call for clarity suffers usual bureaucratic fate"
Wall Street Journal **8 May** 1+

Knickerbocker B (1979)
"China contacts: keep them simple. US firm advises direct approach, no legalese"
Christian Science Monitor **28 March** B6

Brand N, Emery F [letter] (1980)
"The trouble with Gov. Carey's attack on legalese"
New York Times **13 May** A18

"Murdering the mother tongue" (1980)
Christian Science Monitor **11 July** 23

"Getting things straight" (1981)
New York Times **24 Jan** 48

"Antigobbledegook" (1981)
New York Times **2 Aug** 33

Safire W (1982)
"Frank and fruitful exchange"
New York Times Magazine **7 Mar** 9+

Conroy S B (1983)
"Baldridge zaps useless words: the secretary plots a killer computer"
Washington Post **27 Jan** D1

"Lexicon" (1983)
New York Times **1 Jul** A10

Baker R (1983)
"All that monies"
New York Times **20 Jul** A19

Peterson C (1983)
"He thins out the lawyers' underbrush"
Washington Post **15 Sep** A21

Davies P (1984)
"Despite Orwell, 'Oldspeak'-not 'Newspeak'-lives in 1984"
Christian Science Monitor **19 January** 26

British

Ballantyne A (1985)
"Thatcher checks forms of red tape"
Manchester Guardian **8 Aug** 3

"Don't be afraid to query jargon, PM says" (1985)
Belfast Telegraph **8 Aug**

"Fighting Gobbledegook" (1985)
Birmingham Post **8 Aug**

Jones G (1985)
"Whitehall to lose more of its red tape"
Daily Telegraph (London) **8 Aug** 5

"PM gives a word of advice to the baffled" (1985)
Western Mail (Cardiff) **8 Aug**

"Red tape under attack" (1985)
Peterborough Advertiser **8 Aug**

Young R (1985)
"Plain-talking Thatcher hails war against jargon"
Times of London **8 Aug**

"Gobbledegook in Ulster" (1985)
News Letter (Ulster) **9 Aug**

"Plain Speaking" (1985)
Chemist and Druggist **10 Aug**

Robins D (1985)
"Writing labelled a danger"
Lincolnshire Echo **12 Aug**

B 14 LAW AS LITERATURE

Bates F (1980)
A reflection upon law and literature
Chitty's Law Journal **28** 13-21

Freedman S (1984)
The law as literature
Saskatchewan Law Review **49** 319-327

Gopen G D (1984)
Rhyme and reason: why the study of poetry is the best preparation for the study of law
College English **46** 333-347

Scott F R (1973)
The dance is one
Toronto: McClelland and Stewart

Stroup D G (1984)
Law and language: Cardozo's jurisprudence and Wittgenstein's philosophy
Valparaiso University Law Review **18** 331-371

White J B (1973)
The legal imagination: studies in the nature of legal thought and expression
Boston: Little, Brown

White J B (1982)
Law as language: reading law and reading literature
Texas Law Review **60** 415-445

White J B (1983)
The invisible discourse of the law: reflections on legal literacy and general education
University of Colorado Law Review **54** 143-159

White J B (1984a)
The judicial opinion and the poem: ways of reading, ways of life
Michigan Law Review **82** 1669-1699

White J B (1984b)
When words lose their meaning: constitutions and reconstitutions of language, character, and community
Chicago: University of Chicago Press

CONVERSATIONS

Louise Abdelahad
Research and Statistics Section
Department of Justice Canada

Mary Lou Benotto
Barrister & Solicitor Chappell, Bushell & Stewart Toronto
Young Lawyers Committee Canadian Bar Associaton-Ontario

Gerard Bertrand
Chief Legislative Counsel
Department of Justice Canada

Annie Cote-Kennedy
Coordinator Communications Branch
Ministry of the Attorney General Ontario

Jacques Desjardins
Senior Counsel Privy Council Office
Department of Justice Canada
[Members of this Office draft Regulations]

Gerry Dewsbury
Deloitte, Hoskings & Sells
Consultant for the management study of the Planning Department City of North York Ontario

Robert C. Dick
Barrister & Solicitor Rogers, Smith, Dick and Thomson Toronto
Author of *Legal drafting* Drafting counsel for Bank of Nova Scotia plain language consumer contracts

Gail Dykstra
Director
Canadian Law Information Council

Frank Fecteau
Senior Manager Communications Planning & Publications
Ministry of Community and Social Services Ontario

Gordon S. Findlay
Communications Manager Royal Insurance Canada
Co-ordinator of Royal's plain language general insurance policies

Teresa M. Foden
Solicitor The Bank of Nova Scotia
Drafter of current plain language consumer contracts

Dari Golshani
Co-ordinator Standard Forms Program
Ministry of Government Services Ontario

The Hon. Mr. Justice W.D. Griffiths
High Court of Justice for Ontario
Originator of the Canadian Judicial Writing Programme

Sally Hall
President Consumers' Association of Canada

William B. Harris
Supervisor Forms Design
Moore Business Forms Toronto

David E. Jackson
Manager Insurance Services
Insurance Bureau of Canada
Responsible for IBC plain language policies

Miro Korsik
Senior Forms Analyst Record Services Division
Ministry of the Attorney General Ontario

Helga Kutz-Harder
Program Officer The United Church of Canada
Developed and taught a writing course at the University of Windsor Law School

Alex Langford
Chairperson Canadian Bar Association-Ontario

Norm Larson
Assistant Deputy Minister
Department of the Attorney General Manitoba

Don MacPherson
Programme Division
Department of Justice Canada

Douglas A. Neale
Director Information and Communications Services Division
City Clerk's Department Toronto

Don Newman
Commissioner of Planning
City of North York Ontario
Discussed management survey which recommended plain English

Denise Reaume
Coordinator First year studies
University of Toronto Law School

Rosemary Regan
Solicitor Toronto-Dominion Bank Toronto
Co-ordinator of first Bank of Nova Scotia plain language contracts

Meg Richeson
Programme Division
Department of Justice Canada

Glen Rivard
Programme Division
Department of Justice Canada

Arthur Stone
Senior Legislative Counsel Ontario

E H Welch
Record Services Manager
Ministry of the Attorney General Ontario

E C Whiteley
Plain language consultant, forms revision project
Law Reform Commission of Canada

Ginette Williams
Senior Counsel Privy Counsel Office Section
Department of Justice Canada

CANADIAN

CANADIAN BUSINESS AND CURRENT AFFAIRS **1982-1985**
Online edition of *Canadian Business Index* and *Canadian Newspaper Index*

CANADIAN BUSINESS INDEX **1975-1985**
Indexes over 170 Canadian serials in business, industry, economics and related fields.

CANADIAN NEWSPAPER INDEX **1975-1985**
Selective indexing of seven major Canadian newspapers. From 1982 onwards, part of *CB & CA.*

CANADIAN PERIODICAL INDEX **1975-1985**
Indexes 137 Canadian periodicals in all subject areas.

INFO GLOBE **Nov.1977-Aug.1985**
Comprehensive online index to the full text of all editions of the *Globe and Mail.*

PERIODEX:Index analytique de periodiques de langue francaise **1975-1983**
Indexes a selection French periodicals in all subject areas.

RADAR: Repertoire analytique d'articles de revues du Quebec **1975-1983**
Indexes periodicals published in Quebec in all subject areas.

POINT de REPERE **1984-1985**
Continuation of both *PERIODEX* and *RADAR.*

INSURANCE BANKING BUSINESS

INSURANCE ABSTRACTS **1979-1984 (Nov)**

Indexes over 100 journals. Database includes *Life Insurance Index* and *Property & Liability Index.*

INSURANCE PERIODICALS INDEX **1975-1979**

Indexes the trade journals.

ABI/INFORM ***1971-1985***

Worldwide business and management information. More than 500 publications including 140 non-US.

BUSINESS PERIODICALS INDEX **1975-1985**

Indexes 300 English language business periodicals, mostly American.

BUSINESS PUBLICATIONS INDEX AND ABSTRACTS **1983-1985**

Print version of *Management Contents* database. Includes conferences and proceedings.

GENERAL

CONSUMERS INDEX TO PRODUCT EVALUATIONS AND INFORMATION SOURCES **1973-1985**

Indexes a variety of non-technical magazines.

MAGAZINE INDEX **1973-1985**

Indexes more than 435 popular magazines (including a few Canadian).

NATIONAL NEWSPAPER INDEX **1979-1985**

Front page to back page: *Christian Science Monitor, New York Times, and Wall Street Journal.*

PUBLIC AFFAIRS AND INFORMATION SERVICES (P.A.I.S.) **1976-1985**

Indexes 1,200 English language journals in all fields of social science; 8,000 non-serial publications.

READER'S GUIDE TO PERIODICAL LITERATURE **1975-1985**

Indexes 160 general interest American magazines

THE TIMES INDEX **1975-1985**

Front page to back page coverage of *The Times of London.*

LINGUISTICS, LANGUAGE, WRITING & READING RESEARCH

BRITISH EDUCATION INDEX **1975-1985**

Indexes 300 periodicals for articles of permanent educational interest, mostly British.

BRITISH HUMANITIES INDEX **1975-1985**

Indexes 400 British and Commonwealth journals.

CANADIAN EDUCATION INDEX **1975-1985**

Canadian periodicals, books, reports.

ERIC (Educational Resources Information Center) **1980-1985**

includes *Resources in Education and Current Index to Journals in Education*

Covers education and cognitive fields. Includes report literature.

HUMANITIES INDEX **1974-1985**

Indexes English language American, Canadian and British journals in the fields of language, political criticism, history and philosophy.

LANGUAGE AND LANGUAGE BEHAVIOUR ABSTRACTS (LLBA) **1973-1985**

Prepared by Sociological Abstracts.

MODERN LANGUAGES ASSOCIATION INTERNATIONAL BIBLIOGRAPHY **1970-1983**

Indexes books and journal articles on the modern languages, literature and linguistics.

SOCIAL SCIENCES INDEX **1974-1985**

Indexes over 300 English language American, Canadian and British periodicals. Includes law and public administration.

GOVERNMENT DOCUMENTS

BRITISH OFFICIAL PUBLICATIONS **1981-1985**

Includes *Hansard*, everything tabled in the House and some EEC documents

CANADIANA **1975-1985**

National bibliography; includes federal and provincial government documents

MICROLOG **1979-1985**

Selective indexing of Canadian federal and provincial publications; includes some municipal and quasi-government agencies.

NATIONAL TECHNICAL INFORMATION SERVICE **1964-1985**

Research sponsored by the US government and its agencies.

US GOVERNMENT PRINTING OFFICE CATALOG **1976-1985**

Covers all official publications.

LEGAL

INDEX to CANADIAN LEGAL PERIODICAL LITERATURE **1963-1985**
Indexes Canadian legal journals, legal articles in other journals.

INDEX to LEGAL PERIODICALS **1975-1985**
Covers over 400 periodicals from the US, UK, Canada, Australia and New Zealand. Now online retroactive from August 1981.

LEGAL RESOURCES INDEX **1980-1985** (index began in 1980)
Indexes over 660 key law journals: mostly US, fair number UK, Australia, New Zealand, some Canadian. Also indexes 5 law newspapers, monographs, US government publications. Reprints related material from Magazine Index and National Newspaper Index.

LEXIS
Comprehensive, retrospective on-line collection of American, British and French legal materials. Chiefly case reports but includes some other documents.

LIBRARIES

The British Library
in particular the Official Publications Section

Canada. Department of Justice

Canadian Broadcasting Corporation
Sound Archives
Television Archives

Canadian Law Information Council

Forms Design Centre University of Reading

Insurance Bureau of Canada

Law Society of Upper Canada Great Library

Metropolitan Toronto Library Board Central Reference

Metropolitan Toronto Library Board Municipal Reference

National Consumer Council London

Ontario Institute for Studies in Education (OISE)

University of London
Legal Research Library

University of Toronto
Faculty of Law
Faculty of Library and Information Science
Faculty of Management Studies
John P. Robarts Library

York University. Faculty of Law (Osgoode Hall)

APPENDIX 1

Cases in which *Tilden Rent-a-Car v Clendenning* (1978) was judicially considered (to February 1986)

Alliance Truck Rental Ltd v MPHS Topographics (1984)
8 CCLI 70

Craven v Strand Holidays (1980)
31 OR (2d) 548

Craven v Strand Holidays (1982)
142 DLR (3d) 31

Crocker v Sundance Northwest Resorts (1983)
25 CCLT 201

Delaney v Cascade River Holidays (1983)
24 CCLT 6

Dyck v Manitoba Snowmobile Assn. (1981)
5 WWR 97

Dyck v Manitoba Snowmobile Assn. [1982]
4 WWR 318

Dyck v Manitoba Snowmobile Assn. (1982)
21 CCLT 38

Elite Bldrs. v Maritime Life Assur. Co. (1984)
52 BCLR 251

Nikkel v Standard Group Ltd. (1982)
16 Man R (2d) 71

Royal Garage v East Coast Holdings (1983)
41 NFLD & PEIR 297

Tilden Rent-a-Car v Chandra (1983)
150 DLR (3d) 685

Toronto Hydro Electric Commrs. v Budget Car Rental (1983)
443 OR (2d) 539

APPENDIX 2 CITY OF TORONTO NOTICES

City of Toronto

PRIVATELY OWNED OUTDOOR SWIMMING POOLS

NOTICE

City of Toronto By-law No 72-74 requires the owner of every privately owned swimming pool to erect and maintain a fence around the pool in order to eliminate drowning hazards which are associated with such pools.

The By-law outlines and specifies the minimum required standards for fences and their appurtenances.

It is incumbent on all owners of outdoor swimming pools to be familiar with the requirements of this By-law and to ensure that the pool is at all times protected with a fence which is constructed and maintained to the requirements of the By-law. Particular emphasis should be placed on providing and maintaining closers, latches and locking devices on gates and doors leading to the swimming pool area

A copy of this By-law may be obtained from the Department of Buildings & Inspections, 17th Floor, East Tower, City Hall, in person or by phoning 367-7681

The co-operation of all citizens is earnestly requested.

M. L. Nixon,
Commissioner of Buildings
& Inspections

City of Toronto

Public Notice to

Swimming Pool Owners

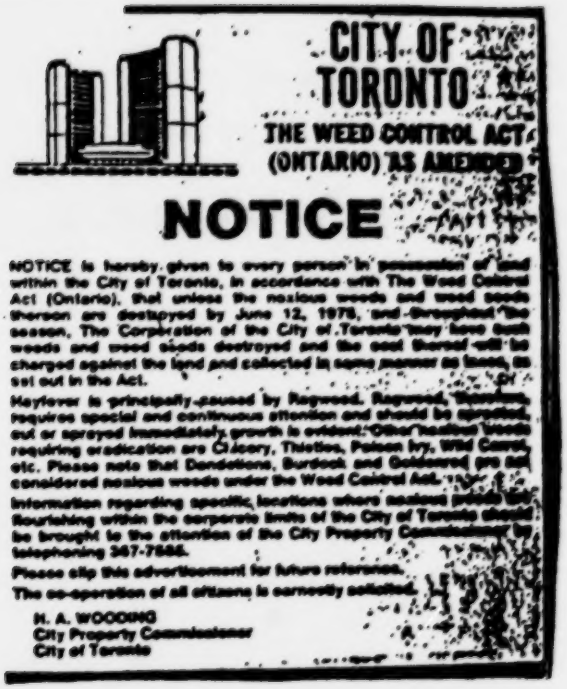
You can stop a tragedy before it happens...

Every summer lives are lost in drowning accidents in backyard swimming pools. Most vulnerable to hazards are youngsters getting into unsupervised, accessible pools.

It's up to all swimming pool owners to erect fences around pools that comply with City By-laws, and to maintain the fences according to municipal standards.

A copy of By-law 72-74 which provides details on the minimum required standards for fences around privately owned outdoor swimming pools, is available from the Department of Buildings and Inspections, 16th Floor, East Tower, City Hall or by calling 947-7960.

Michael L. Nixon, P. Eng.
Commissioner of Buildings and Inspections
and Chief Building Official



CITY OF TORONTO

THE WEED CONTROL ACT (ONTARIO) AS AMENDED

NOTICE

NOTICE is hereby given to every person in possession of land within the City of Toronto, in accordance with The Weed Control Act (Ontario), that unless the noxious weeds and weed seeds thereon are destroyed by June 12, 1978, and throughout the season, The Corporation of the City of Toronto may have such weeds and weed seeds destroyed and the cost thereof will be charged against the land and collected in same manner as taxes, as set out in the Act.

Hayfever is principally caused by Ragweed. Ragweed, therefore, requires special and continuous attention and should be uprooted, cut or sprayed immediately growth is evident. Other noxious weeds requiring eradication are Chicory, Thistles, Poison Ivy, Wild Carrot, etc. Please note that Dandelions, Burdock and Goldenrod are not considered noxious weeds under the Weed Control Act.

Information regarding specific locations where noxious weeds are flourishing within the corporate limits of the City of Toronto should be brought to the attention of the City Property Commissioner by telephoning 367-7585.

Please clip this advertisement for future reference.

The co-operation of all citizens is earnestly solicited.

H. A. WOODING
City Property Commissioner
City of Toronto

City of Toronto

WEED CONTROL

All property owners in the City of Toronto are required, under the Weed Control Act (Ontario), to destroy any noxious weeds and weed seeds growing on their land by June 4, 1984. Noxious weeds occurring at other times during the season should also be destroyed immediately.

After June 4, 1984 the City of Toronto may destroy any noxious weeds discovered, with the cost being charged against the land and collected in the same manner as property taxes.

Ragweed, the principal cause of hayfever, requires special and continuous attention. When found it should be uprooted, cut or sprayed immediately. Other noxious weeds include: chicory, thistles, poison ivy and wild carrot. Dandelions, burdock and goldenrod are not considered noxious under the Weed Control Act.

Anyone having information on specific locations of noxious weeds flourishing within the City of Toronto should contact the Commissioner of City Property at 947-7585.

Please clip this advertisement for future reference.

Your co-operation is earnestly requested.

Rashmi Nathwani
Commissioner of City Property.

CITY OF TORONTO

1977 REALTY TAXES

INTERIM BILLING

In accordance with the provisions of the Municipal Act and pursuant to By-Law No. 4-77 adopted by Council on January 17, 1977, the first three instalments of realty taxes for 1977 will become due as follows:

	First Instalment	Second Instalment	Third Instalment
ALL WARDS	Feb. 16	Apr. 6	May 25

The above instalments represent an interim billing of 1977 taxes based upon one half of last year's mill rates. The balance will be billed about the middle of the year and will be payable in another three instalments.

All Interim Realty Tax Bills have now been issued. Ratepayers who have not received tax bills should make immediate application at the Tax Information Counter, City Hall, or by telephone 367-7115.

PAYMENT OF TAXES

These taxes may be paid at the locations and in the manner detailed in the pamphlet which was enclosed with each bill.

W. A. WILFORD
City Treasurer.

City of Toronto

Important Notice to City of Toronto Realty Taxpayers

By now you should have received your 1985 Interim Realty Tax Bill. If you have not yet received it, please call 947-7115, or write to the Tax Collector, City Hall, Toronto M5H 2N2, or visit the Tax Information Counter, Main Floor, City Hall as soon as possible.

Remember even if you don't receive a bill, you are still responsible for paying your realty taxes. The first four instalments for 1985 are due by February 15, March 15, April 15 and May 15.

These instalments represent an interim billing of 1985 taxes based on one half of last year's residential mill rates. In May you will receive a bill for the balance of your 1985 realty taxes which will be payable in another four instalments.

G.H. Clarke
City Treasurer